

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
March 27, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:35 a.m. on Friday, March 27, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Valerie Wiener, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Mike McGinness  
Senator Maurice E. Washington  
Senator Mark E. Amodei

**GUEST LEGISLATORS PRESENT:**

Senator Bernice Mathews, Washoe County Senatorial District No. 1

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Bradley A. Wilkinson, Chief Deputy Legislative Counsel  
Kathleen Swain, Committee Secretary

**OTHERS PRESENT:**

Lora E. Myles, Carson and Rural Elder Law Program; Nevada Senior Corps Association  
Ginny Casazza, Nevada Guardianship Association  
Barry Gold, Director of Government Relations, AARP Nevada  
Bill Uffelman, Nevada Bankers Association

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Diane J. Comeaux, Administrator, Division of Child and Family Services,  
Department of Health and Human Services

CHAIR CARE:

I will open the hearing on Senate Bill (S.B.) 313.

[SENATE BILL 313](#): Revises provisions relating to guardianships. (BDR 13-182)

SENATOR BERNICE MATHEWS (Washoe County Senatorial District No. 1):  
Lora Myles works in the area of elder law. She will present two bills to you this morning.

LORA E. MYLES (Carson and Rural Elder Law Program; Nevada Senior Corps Association):

I run a nonprofit legal services program for seniors in the rural counties. We see many problems arising with guardianships, powers of attorney and elder abuse. I have been working with Sally Ramm with the Aging Services Division on several issues, especially powers of attorney. We worked with the Nevada Guardianship Association, various attorneys who handle guardianships and the public guardians on guardianship issues.

Senate Bill 313 started out as an attempt to amend problems regarding guardianships that involved elder abuse and other problems. Problems also arose with guardianship accounts through the banks where those accounts were considered abandoned. These accounts were court-ordered guardianship accounts even though there was no activity. Issues also arose involving mental health associations and their failure to recognize guardians when a ward was placed in one of the State mental health facilities.

We spoke with the Nevada Guardianship Association that was informed from the National Guardianship Association about the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. We merged all our issues into one bill.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act is an important issue, especially in Nevada where we have so many transients and people coming from other states to stay in our casinos. For example, if a senior comes to Las Vegas and has a stroke at the casino, that person will need a guardianship. Under Nevada's guardianship law, a guardian of a senior in

Nevada must be a Nevada resident. However, that senior is not a resident of Nevada. We needed something to address this situation. How do we deal with guardianships of individuals present in Nevada but not residents of Nevada and whose assets are in another state?

We also face the problem of granny-napping, where a senior is under a guardianship in Nevada, but a family member who objects to that guardianship kidnaps the senior and takes them across state lines. Fortunately, we had a Uniform Act that addressed all these issues.

The primary portion of S.B. 313 involves the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act addressing the issues of cross-jurisdictional proceedings in guardianships. This allows courts in Nevada to discuss matters with courts in other jurisdictions. It specifically addresses issues such as what a ward's home state is, how to determine which state has the right of jurisdiction over a guardianship and what to do if a guardianship is brought in Nevada when another state is more properly the correct jurisdiction. It addresses how to transfer the jurisdiction of a guardianship from Nevada to another state when the ward and the guardian move out of state. It addresses what happens when a guardianship is transferred into Nevada when the ward and the guardian move into Nevada.

We have had issues like these in several counties where family members move into Nevada from another state, bringing the ward with them. They assume their guardianship in the other state is good in Nevada. Until now, those guardianships have not been recognized by providers in Nevada because the guardianship is from another jurisdiction. This Act addresses that issue and allows the ward to be brought into Nevada.

For example, a couple came to Nevada with their young daughter, who is developmentally disabled. They had been told their guardianship would be good anywhere they went. However, when they applied for Medicaid and Supplemental Security Income in the Nevada system, they were told she was no longer eligible for those benefits. They would have to return to Idaho to receive benefits. This Act would prevent that kind of situation from occurring.

There are several other provisions in the Act. A provision was added on page 13 of S.B. 313, which amends the information that must be provided to a court in determining competency of the ward. We are looking at Assembly Bill

(A.B.) 320, which does the same thing. We may have to merge A.B. 320 with S.B. 313 on that issue.

**ASSEMBLY BILL 320**: Revises provisions relating to guardianships. (BDR 13-906)

We also discuss the requirement of additional documentation necessary to obtain temporary guardianships for both the person and the finances of an individual. Unfortunately, family guardians do not always provide the necessary documentation. You can obtain a temporary guardianship of an individual simply on the affidavit of the petitioner. For example, we had an individual who was living with his mother. He was physically, financially and emotionally abusive. We tried to evict him from his mother's house. He immediately filed a temporary guardianship on his affidavit stating his mother was incompetent, even though she was not. He used the temporary guardianship to clean out her bank account before leaving the State. We got that resolved, but the money was never returned. He did not provide notice to his mother. She found out because the bank called her to say her checks were bouncing.

We have proposed an amendment to section 33 of the bill. Veterans Administration (VA) doctors are not necessarily licensed in Nevada. We need to include language so documentation can come from a physician who is licensed in the State, a VA doctor or a letter signed by a government agency in the State that conducts investigations. The same change would apply in section 34 of the bill on page 20. We need to include VA doctors. Several VA doctors are not licensed in Nevada. There is no requirement for a VA doctor to be licensed in this State.

CHAIR CARE:

Is that sufficient? Do we need a written proposed amendment?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):  
No, that is fine.

MS. MYLES:

We added into the guardianship provision the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in section 39 of the bill. A guardian will not be required to go to the doctor and have the ward sign releases for the guardian

under HIPAA statutes. Doctors have difficulty providing medical information without releases under HIPAA.

Bank accounts going inactive have become more of an issue. We understand banks need to create abandoned accounts when there is inactivity on an account. However, certain accounts should be exempt from the presumption of abandonment. On page 37, section 55 of the bill, we ask that certain accounts be exempted. Burial accounts are set up at the beginning of the guardianship, and it may be several years before those accounts have any activity, which only occurs when the ward dies. Those accounts going inactive and into the State unclaimed property funds creates difficulty for the guardian and the courts.

SENATOR WIENER:

Anything going out under the umbrella of the Uniform Law Commission meets the standards from their Chicago review process. You mentioned A.B. 320. What about page 13 of the bill?

MS. MYLES:

The provisions on page 13 of the bill are not part of the Uniform Act. The Uniform Act is on pages 3 through 8 of the bill. We did contact Eric Fish, Legislative Counsel to the Uniform Law Commission. He gave his approval to incorporate the Act into S.B. 313.

We incorporated the Act into this bill rather than a separate bill because Nevada already had several provisions in Nevada Revised Statute (NRS) 159 governing jurisdiction. We had to amend those provisions to incorporate the Uniform Act.

GINNY CASAZZA (Nevada Guardianship Association):

We support S.B. 313. This Uniform Act is near and dear to the Nevada Guardianship Association and the National Guardianship Association. The packet I provided for you includes a one-page summary of what the Act does (Exhibit C, original is on file in the Research Library). It includes an article written by Lori A. Stiegel and Erica F. Wood, Exhibit C, pages 2 through 7. The article discusses how passage of the Uniform Act helps to combat elder abuse. There are endorsements of this Act from multiple organizations, Exhibit C, pages 8 through 19.

A section in the Act makes changes to professional guardians. The current statute states a professional guardian must be certified by the National

Guardianship Foundation as a master guardian or a registered guardian. The National Guardianship Foundation changed its name to the Center for Guardianship Certification and changed those designations. The master guardian is now a National Master Guardian and the registered guardian is now a National Certified Guardian. We needed to bring the Nevada statute in line with those new names and designations. If the Center were to change those designations, change its name in the future or add intermediary certifications that would also qualify, we added the language "or any successor organization" on page 23, line 30 of the bill so we will not have to do this again.

BARRY GOLD (Director of Government Relations, AARP Nevada):  
I will read from my written testimony ([Exhibit D](#)) in support of S.B. 313.

CHAIR CARE:

I will close the hearing on S.B. 313. Hearing no opposition, I will entertain a motion. We have one amendment regarding VA doctors.

SENATOR WIENER:

As the Senate's representative on the Commission on Aging since 1997, I will make a motion.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 313.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

I will open the hearing on S.B. 314.

[SENATE BILL 314](#): Adopts the Uniform Power of Attorney Act. (BDR 13-183)

MS. MYLES:

This is a uniform act, the Uniform Power of Attorney Act. The power of attorney language for financial power of attorney is four paragraphs under NRS 111, which is the real property statute. It does not cover financial

institutions. There is no law in Nevada concerning powers of attorney for financial institutions. This has created a hardship for Nevada's seniors. There is no uniform form for financial powers of attorney in Nevada.

Powers of attorney for health care are under NRS 449, which are the hospital and institutions provisions. We looked at why the powers of attorney are under NRS 111 and NRS 449. It would be better to have a new chapter under Title 13 of NRS covering just powers of attorney and to bring in the Uniform Power of Attorney Act.

There are no teeth in the statutes concerning misuse of a power of attorney. We have had many elder abuse cases in all the counties concerning powers of attorney who use that document to exploit seniors. Sheriffs and district attorneys in all the counties say because the exploitation occurred under a power of attorney, it is not a criminal matter but a civil matter. There are no statutes allowing them to prosecute.

We had one egregious case where an exploiter confessed she had used the power of attorney to take a large sum of money from her mother. The district attorney and sheriff refused to prosecute because there were no provisions in the statutes allowing prosecution for misuse of a power of attorney.

The Uniform Power of Attorney Act allows prosecution if the power of attorney is misused. It is no longer a civil matter. It becomes an abuse and exploitation matter. The district attorneys and sheriffs we have spoken with regarding this matter like the idea they can prosecute these exploitive individuals.

Under the Uniform Power of Attorney Act, we are importing provisions concerning HIPAA into the health care power of attorney provisions. We have a proposed amendment ([Exhibit E](#), pages 2 through 9). This amendment includes provisions either missed between drafting the bill and Legislative Counsel Bureau producing the bill or requested by the Nevada Bankers Association.

The Nevada Bankers Association requested language concerning incapacity on page 2 in section 8 of the bill be removed from the Act ([Exhibit F](#)). Our response to the bankers' request is in the first box of [Exhibit F](#). If we included the language concerning incapacity, all powers of attorney would become durable. In the Act and in the proposed form, the principal has the right to choose

whether the power of attorney is durable, meaning it lasts through the incapacity of the individual; whether the power of attorney is springing, meaning it comes into effect only when the individual is incapacitated; or whether it is a nondurable power of attorney. The form also includes whether the power of attorney has an expiration date or an effective date. Please refer to page 29, lines 1 through 11 of the bill.

Powers of attorney for health care have similar provisions already in the statutes. We included that in the power of attorney for finances.

The bankers requested the provisions on page 1 of [Exhibit F](#) in the second box, starting with section 106 (d). The bankers were concerned over whether a copy or a fax sent to the bank would be a true copy of the original power of attorney. We included a provision recommended by Eric Fish that says the named agent can furnish an affidavit on request of the bank stating whether the power of attorney is a good power of attorney or a true copy, and the bank can rely on that affidavit. The bank can therefore choose to accept the faxed or copied power of attorney.

The other provisions the bankers requested have been incorporated into the amendment, [Exhibit E](#). We did not incorporate the bankers' suggestion on page 2 of [Exhibit F](#), section 120. Section 120 is section 35 in the bill. It discusses accepting powers of attorney done prior to passage of the bill except powers of attorney from another jurisdiction. The alternative suggested by the Bankers Association would restrict acceptance to only statutory forms. Unfortunately, statutory forms are just now being created. If we accepted only statutory forms, we would be ignoring all the powers of attorney currently in existence. Many seniors create powers of attorney several years before they become incompetent. It would cause hardship for many Nevada seniors to say those powers of attorney are not valid because they do not comply with the statutory form.

The bankers requested provisions on page 2 of [Exhibit F](#), starting with section 201 (a), section 39 in the bill. To allow the power of attorney to manage a trust would be in violation of Nevada's trust law. Powers of attorney do not manage trusts. Trustees manage trusts. A power of attorney under the Uniform Act could create a trust for the principal. Unless the power of attorney was also the trustee under the trust, the power of attorney should not be allowed to manage the trust.



We discussed section 23 in the amendment on page 2 of [Exhibit E](#) with Mr. Fish and other parties involved. Under Nevada statutes, if a guardianship is initiated, the power of attorney becomes void under the guardianship, and the guardian takes over management of the principal's assets, estate and person. Under section 23, paragraph 2 of [Exhibit E](#), once a court appoints a guardian, the power of attorney is terminated. That provision is contained in NRS 449 for powers of attorney of health care. It should apply for powers of attorney for finances as well. To allow a power of attorney to continue to act, especially if the power of attorney has been exploitive, when there is a guardian in place would cause complications and misuse of funds.

On page 6 of [Exhibit E](#), we have included the HIPAA language in the power of attorney for health care. We make no changes to the end-of-life issues presented in the power of attorney. We are adding provisions to incorporate HIPAA.

An issue that frequently arises is when the power of attorney signs paperwork for a nursing home, and they do not realize the paperwork includes a clause for arbitration if any issues arise with the care of the senior in the nursing home. In most states, the courts find those clauses for arbitration invalid. The nursing homes still try to enforce them. On page 6 of [Exhibit E](#), we include a provision stating the power of attorney does not have the right to agree to arbitration on behalf of the principal in those situations. In particular, when a senior in a nursing home is injured, the facility, because of the arbitration clauses, says the family and the guardian cannot sue the facility because there is an arbitration clause. If the power of attorney inadvertently signs the arbitration clause in checking the individual into a nursing home, that clause would be invalid.

The Uniform Act consistently uses the term "agent" in place of attorney in fact. The term "attorney in fact" is confusing to seniors. We removed the term "attorney in fact" throughout the bill, [Exhibit E](#), page 9, and request the term "attorney in fact" be replaced with the term "agent."

SENATOR WIENER:

I see the "agent" language. Since the drafting, have you discovered language that should be cleaned up?

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MS. MYLES:

Yes, we need to clean it up. "Attorney in fact" needs to be taken out and replaced with "agent."

We have broad support of this bill.

SENATOR WIENER:

In the broad support, is that with what you presented to us as your response to the bankers, [Exhibit F](#)?

MS. MYLES:

Yes. The response to the bankers was easily worked in. We did not change the provisions we did not agree with, and we indicated why, [Exhibit F](#).

SENATOR WIENER:

For the record, I want to make sure all that broad support is based on what occurred since the drafting of the bill. Is this correct?

MS. MYLES:

Yes.

BILL UFFELMAN (Nevada Bankers Association):

The amendments we offered ([Exhibit G](#)) came from a banking attorney who practices nationwide. The compiled amendment from Ms. Myles dated March 27 accommodates many of the things we asked, [Exhibit E](#). On page 3 of [Exhibit E](#), under section 34, item 4 regarding English translation says seven business days. Section 35 says ten business days. I ask it be ten business days in both places. Throughout the Act where it says seven business days, it should be ten business days for consistency, [Exhibit G](#), page 2.

MR. GOLD:

I will read from my written testimony ([Exhibit H](#)).

CHAIR CARE:

I close the hearing on S.B. 314. I will talk to Senator Michael A. Schneider regarding Senate Bill 182 and Senate Bill 183.

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SENATE BILL 182: Makes various changes relating to common-interest communities. (BDR 10-795)

SENATE BILL 183: Revises various provisions governing common-interest communities. (BDR 10-70)

CHAIR CARE:

I will open the work session on S.B. 86. We all have the work session document ([Exhibit I](#)).

SENATE BILL 86: Makes various changes concerning children who are ordered to be placed in the custody of an agency which provides child welfare services by the juvenile court. (BDR 5-361)

SENATOR WIENER:

I had two or three meetings with the concerned parties regarding S.B. 86 because of comments and testimony that raised some concern. We had extensive testimony from the State regarding an audit taken in 2006 indicating we needed to make statutory changes. We must comply with federal requirements, and we must show progress in this area regarding children who come into the foster care system. There was strong support from juvenile justice administrators for the legislation brought to us with the amendments.

A couple of judges had some concerns. The bill before you with the mandatory language is the closest we can come at this point. If we do not show progress statutorily, we are subject to fines for noncompliance. We could be fined \$300,000 for noncompliance. Compliance begins with a statute to show we are making progress. I will continue to work with everyone in the interim as needed so we can come back if we need to make changes.

CHAIR CARE:

You recommend the Committee amend and do pass with the amendment before us. I recall the testimony from one of our judges that the risk is \$7 million.

SENATOR WIENER:

Twenty-three items are part of the evaluation process. There is a \$300,000 fine per item for noncompliance unless we have a statute showing we intend to comply with federal laws.

DIANE J. COMEAUX (Administrator, Division of Child and Family Services,  
Department of Health and Human Services):

We have worked with the stakeholders to get the best legislation passed we can. We incorporated their comments and concerns that do not deviate from the original purpose of the bill. The amendment before you does that. Senator Wiener is correct. The federal government will evaluate 23 items in its upcoming review. Noncompliance of the items carries a \$300,000 penalty per item. We are comfortable that showing we have legislation in place will demonstrate we are starting to comply with those requirements.

CHAIR CARE:

Hearing no comments or opposition, I will entertain a motion.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 86.

SENATOR PARKS SECONDED THE MOTION.

SENATOR WASHINGTON:

I am reserved on this, so I will read through it. I will reserve my vote on the floor. I will vote to send it out of Committee, but I do have some questions.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:

There being nothing further to come before the Committee, I will adjourn the meeting at 9:32 a.m.

RESPECTFULLY SUBMITTED:

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Kathleen Swain,  
Committee Secretary

APPROVED BY:

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Senator Terry Care, Chair

DATE: \_\_\_\_\_