MINUTES OF THE MEETING OF THE ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Ninth Session April 21, 2017

The Committee on Judiciary was called to order by Vice Chairman James Ohrenschall at 9:03 a.m. on Friday, April 21, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4404B of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblyman Steve Yeager, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblywoman Lesley E. Cohen
Assemblyman Ozzie Fumo
Assemblyman Ira Hansen
Assemblywoman Sandra Jauregui
Assemblywoman Erittney Miller
Assemblyman Keith Pickard
Assemblyman Tyrone Thompson
Assemblyman Justin Watkins
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None



STAFF MEMBERS PRESENT:

Diane C. Thornton, Committee Policy Analyst Brad Wilkinson, Committee Counsel Janet Jones, Committee Secretary Melissa Loomis, Committee Assistant

OTHERS PRESENT:

Barbara K. Cegavske, Secretary of State
Kimberley Perondi, Deputy Secretary for Commercial Recordings, Office of
the Secretary of State
Scott Anderson, Chief Deputy, Office of the Secretary of State
Cadence Matijevich, Deputy Secretary for Operations, Office of the Secretary
of State
Melissa Exline, Attorney, Surratt Law, Reno, Nevada

Vice Chairman James Ohrenschall:

[Roll was called. Committee protocol and rules were explained.] Chairman Yeager is at the Senate presenting a bill, so we will begin without him. We will open the hearing on Senate Bill 41 (1st Reprint).

Senate Bill 41 (1st Reprint): Revises various provisions relating to business entities. (BDR 7-425)

Barbara K. Cegavske, Secretary of State:

Scott Anderson, Chief Deputy, and Kimberley Perondi, Deputy Secretary for Commercial Recordings, are here with me today. We are going to present <u>Senate Bill 41 (1st Reprint)</u> which cleans up several provisions of the *Nevada Revised Statutes* (NRS) Title 7 pertaining to businesses in Nevada and the process within the Commercial Recordings Division of the Office of the Secretary of State. With your approval, Vice Chairman Ohrenschall, I will turn the time over to Kimberley Perondi, who will review the proposed changes included in the bill.

Kimberley Perondi, Deputy Secretary for Commercial Recordings, Office of the Secretary of State:

Section 1 removes the exemption from the state business license in NRS Chapter 76 for businesses whose primary purpose is to create or produce motion pictures. In order to verify that an entity is engaged in the production of motion pictures, our office requires a number that is assigned by the Nevada Film Office, Division of Motion Pictures, Office of Economic Development, Office of the Governor for a company claiming the exemption. The Film Office has stated that they issue registration numbers only for tracking the economic impact of motion picture projects and not for determining if an entity's primary purpose is the production of motion pictures. We have received concerns that ineligible entities continue to contact the Film Office for a registration number so they can claim the

exemption. Many entities that try to claim this exemption stated that the production of motion pictures was their primary purpose but that production had not yet started or their business was not in film production. We have also experienced situations where individuals attempt to claim the exemption with posting YouTube videos or promotional videos on their own websites.

The state business license fee is \$500 for corporations and \$200 for all others. There are currently 245 exemptions on record with our office, representing less than one tenth of 1 percent of our 350,000 total licensed entities. I would note that <u>Assembly Bill 6</u>, presented by the Governor's Office of Economic Development, contains the same deletion of this statutory exemption, and it passed through the Assembly Committee on Commerce and Labor and the full Assembly. Would you like me to go through all of the sections continuously, or do you want to stop for questions after each one?

Vice Chairman Ohrenschall:

If you have time to go through the sections, I will take questions from the Committee members at the end of your testimony.

Kimberley Perondi:

Section 2 returns the language relating to the examination of records required to be held by registered agents to the language prior to the 2015 Session. During the 2015 Session the provisions were softened, which made it difficult to proceed with investigations of alleged violations of the provisions of NRS Chapter 77, which relates to registered agents.

Section 3 deletes subsection 1, paragraph (c) of NRS 82A.110, as churches and bona fide religious organizations that are exempt from taxation pursuant to 501(c)(3) of the Internal Revenue Code are excluded under the definition of charitable organizations in NRS 82A.025, so it is unnecessary and redundant. These organizations currently are not required to file a Charitable Solicitation Registration Statement and will continue as such with this deletion. We will include in our instructions that churches and religious organizations are exempt from the provisions of NRS Chapter 82A. While not in the current text of S.B. 41 (R1), the provisions of NRS 82A.210, subsection 5, requiring certain disclosures by a charitable organization soliciting contributions, would not apply to churches and religious organizations, again, because they are excluded under the definition of a charitable organization.

Section 4 corrects a contradictory filing fee for reinstatement of a corporation sole as prescribed by NRS 84.150, subsection 1, paragraph (b) by striking the \$25 fee and referring to the provisions of NRS 84.110, as these are statutory fees associated with the corporation sole filings in our commercial recordings division.

I would like to turn the time over to Scott Anderson, Chief Deputy of the Office of Secretary of State to discuss sections 5 through 7.

Scott Anderson, Chief Deputy, Office of the Secretary of State:

Sections 5 through 7 are a result of provisions proposed by the Nevada Registered Agent Association. We found those provisions to be acceptable. The provisions in these sections are consistent with changes that were made in the 2015 Session but were overlooked relating to limited liability companies (LLCs). These are conforming changes to add consistency to the changes made in the 2015 Session to all business entities. I will now turn it back to Ms. Perondi to conclude our presentation.

Kimberley Perondi:

That concludes our presentation of S.B. 41 (R1), and we remain open for any questions.

Assemblyman Elliot T. Anderson:

First, I would like to address section 2. Could you clarify how "to be necessary or appropriate" would trigger an investigation?

Scott Anderson:

The Secretary of State is charged with regulating the registered agents within the state. We have thousands of registered agents that are required to maintain certain business hours, follow certain requirements, and maintain certain documents in their office. In the 2015 Session there were provisions changed that weakened the ability for the Secretary of State to go in and investigate when there are alleged violations of NRS Chapter 77 relating to registered agents. We discussed this with the registered agents, and they were agreeable to this. This is also somewhat related to the Panama Papers and Mossack Fonseca. We had issues going forward initially because of the provisions that were in the current 2015 language. This takes us back to provisions that when we have cause, it will allow us to go in and look at the registered agents and their practices.

Assemblyman Elliot T. Anderson:

I understand what you are doing. I want to get on record the intent of what that language exactly means. What would you deem necessary or appropriate by just using the language in the bill?

Scott Anderson:

If we have a reasonable cause to go and look at their records because we have received evidence that there is a violation of NRS Chapter 77 and the requirements of registered agents, we could go in and take a look to make sure they are following the provisions of the NRS.

Assemblyman Elliot T. Anderson:

In section 3, can you clarify what the intent is of these changes? It looks like you are requiring a church to register.

Scott Anderson:

No, we are not requiring churches to register. This is deleting language in section 3, subsection 1, paragraph (c), to remove an unnecessary provision in law. The definition of a charitable organization specifically excludes bona fide religious organizations and their auxiliaries. This was a redundant section and confusing to those who had to file the Charitable Solicitation Registration Statement. It was requested to be removed.

Assemblyman Pickard:

Anytime we can clean up statutory language, I think it is a good thing. I have a question regarding section 3, and it is along the same lines as Assemblyman Anderson's. As I look at the definition of a charitable organization under NRS 82A.025, it merely says that the terms do not include an organization that is established for and serving bona fide religious purposes. The language in section 3, subsection 1, paragraph (c) goes beyond that and so they are not perfect mirror images. This one includes "or" it is connected by a church as defined by NRS 82A.035. It also states a religious organization that holds property for charitable or religious purposes and "may include, without limitation, a mosque, synagogue or temple." Nevada Revised Statutes (NRS) 82A.110, subsection 1, paragraph (c) goes beyond that by saying, "a church or one or more of its integrated auxiliaries or by a convention or association of churches " It appears to me that this language is not a mirror image and it actually goes beyond those other definitions. Most of the time language is added to a statute in order to capture something that may have been missed or was intended to be in that definition. I wonder where we can maintain the protections for integrated auxiliaries or by convention or association with churches where it is not defined anywhere else. Or is it?

Scott Anderson:

The intent was not to change any of the exemptions for religious organizations or their auxiliaries. The groups that this affects felt it was confusing. The intent of this is not to change any of the processes and would still include auxiliaries and organizations under a religious organization. By leaving the language in, it would not have changed how we file the exemptions that are given. It is just to clean up the language; there is no intent to change any of the process.

Assemblyman Pickard:

I understand that, and it makes sense. I know some churches are complex and have many auxiliary organizations—some are for-profit but most are nonprofit. As we see more complex organizations, I want to make sure we are not inadvertently leaving out one or two that might actually apply here by deleting language. If I understand correctly, the intent, for the record, is that we are not changing anything but just trying to simplify the language and all of the auxiliary components of that church would still be protected. Is that correct?

Scott Anderson:

That is correct.

Assemblywoman Krasner:

Removing a business that says their primary purpose is to create or produce motion pictures, but they really create YouTube videos, I understand that. However, I know there was a lot of excitement about bringing motion picture companies from California to Las Vegas and Nevada, and the state gives them a tax credit. Are these changes going to affect those businesses in that exemption?

Scott Anderson:

This provision has been in the state business license law since at least 2003. In dealing with the Film Division in the Governor's Office of Economic Development (GOED), there have been many problems with the way this has worked. There are still tax incentives through the GOED for film companies. The Governor's Office of Economic Development stated in their testimony on A.B. 6 that they felt this was unnecessary because of the other tax incentives there are for film companies. Additionally, the Film Office generally licenses projects, not companies. The state business license is for specific companies—businesses within Nevada—not specifically a project. There have been many problems with companies calling up the Film Office asking for this registration number so they can simply get around the state business license. We were finding many companies saying they produce motion pictures and they had no project in place and nothing with the Governor's Office of Economic Development.

Assemblywoman Krasner:

There is a notation at the top of this bill that it requires a two-thirds majority vote. Can you tell us why that is there?

Scott Anderson:

That is because this bill deals with fees. As you can see, in section 4 there were fees that did not agree with each other. There was a change in fees approved by the Legislature, I believe it was in the 77th Session, that changed the amount for reinstatement, and it was not changed in both places. They added a fee but did not remove the old fee. This removes the old fee but does not change what we are doing in regard to fees being charged. The fee we are charging was approved by the Legislature.

[Assemblyman Yeager assumed the Chair.]

Chairman Yeager:

Are there any further questions from the Committee?

Assemblyman Ohrenschall:

In section 7, with regard to the intent and the changes between place of business and registered office, what is the intent of that change for limited partnerships?

Scott Anderson:

There were changes made in the 78th Session that adopted provisions relating to where certain records would be held or who the custodian of record would be. Those changes were not made in the limited liability company or partnership sections. We are now adding those conforming changes so it is the same requirement for all business entities. It is currently a requirement for corporations.

Chairman Yeager:

Thank you for your presentation this morning. Did you have anything you wanted to add, Ms. Cegavske?

Barbara Cegavske:

I just wanted to thank you and the Committee for giving us the opportunity to discuss S.B. 41 (R1).

Chairman Yeager:

We will open the hearing for testimony in support. I see no one in support. How about in opposition? I see no one in opposition. How about in the neutral position? I see no one in the neutral position. We will now close the hearing on Senate Bill 515.

Senate Bill 515: Revises provisions relating to the financial administration of the Securities Division of the Office of the Secretary of State. (BDR 7-894)

Barbara K. Cegavske, Secretary of State:

We want to thank you for the opportunity to present <u>Senate Bill 515</u> today. This is an important bill for our office, as it relates to a component of our budget request for the upcoming biennium. This is a relatively straightforward bill, but because it relates to our budget, I would like to have our Deputy Secretary for Operations, Cadence Matijevich, give an overview of why we requested the bill and what it will accomplish.

Our Chief Deputy Secretary of State, Scott Anderson, is also here, and our Securities Administrator, Diana Foley, is present in Las Vegas. They are here to answer any questions from the Committee, if necessary.

With your permission, Mr. Chairman, I will now turn it over to our Operations Deputy, Cadence Matijevich.

Cadence Matijevich, Deputy Secretary for Operations, Office of the Secretary of State:

As Secretary Cegavske indicated, this bill relates to our budget request for the upcoming biennium, and we are grateful to the Governor's Office of Finance for submitting this measure on our behalf.

The operating budget for the Securities Division in the Office of the Secretary of State is currently funded with monies received from enforcement actions authorized by *Nevada Revised Statutes* (NRS) Chapter 90. Those monies are deposited to the General Fund for credit to the Secretary of State's Operating General Fund Budget account, and if the monies collected exceed expenses, the balance is forwarded at the end of each fiscal year.

The amount of funds collected as a result of enforcement actions can vary widely from year to year and can be difficult to project, particularly given the varying nature of cases that the division may encounter from year to year and the length of time necessary to bring those cases to a close.

Notably, significant revenues were collected during the 2009-2011 period as a result of multistate settlements related to the collapse of the auction rate securities market. Those revenues allowed the office to balance forward funds over the last several fiscal years to cover operating expenses. However, our office does not anticipate that we will receive similar settlements in either the current or the upcoming biennium.

This unpredictability has presented challenges for us in budgeting for the operational needs of our Securities Division, and passage of this bill would allow for the proposed solution included in the Governor's recommended budget for our office for the 2017-2019 biennium to be implemented.

Sections 1, 2, and 3 of the bill would revise the requirement that the revenues collected from the enforcement actions be deposited into the State General Fund for a credit to the Secretary of State's Operating General Fund budget. Instead, it would be required that those revenues be deposited with the State Treasurer for credit to the State General Fund.

Section 4 of the bill would repeal NRS 90.851, which specifies the uses of the funds collected as a result of enforcement actions authorized by NRS Chapter 90, thereby making them available for unrestricted State General Fund use. Repealing NRS 90.851 would also remove the authorization for unspent funds in our Securities Division's operating budget to be carried forward at the end of each fiscal year.

Section 5 of the bill would require the Office of the State Controller to transfer any unexpended balance of funds remaining in the Secretary of State's Operating General Fund budget account in the State General Fund at the end of the current fiscal year to the State General Fund for unrestricted State General Fund use.

I would also note that passage of this bill would support a recent recommendation from the Governor's Finance Office, Division of Internal Audits, that the operating budget for our Securities Division be funded from the State General Fund, rather than from monies collected as a result of enforcement actions.

The Division of Internal Audits presented audit report No. 17-02 to the Executive Branch Audit Committee on February 22, 2017. The report concluded that modifying the Division's funding statute to fund operational costs from the State General Fund would provide a more effective way to budget costs and would eliminate any potential conflict of interest due to the Securities Administrator having the authority to impose penalties and fines to cover enforcement operating expenses.

This concludes my overview of <u>S.B. 515</u>, and our team is available to answer any questions.

Chairman Yeager:

Thank you for your testimony. Madam Secretary of State, would you like to add anything before we open it up for questions?

Barbara Cegavske:

We just want to thank you for listening to both of our bills today; we appreciate the Committee's time.

Chairman Yeager:

Are there any questions from Committee members on <u>S.B. 515</u>? [There were none.] I will open the hearing up for testimony in support. [There was none.] Is anyone opposed to <u>S.B. 515</u>? [There was no one.] Is there anyone in the neutral position? [There was no one.] I will now close the hearing on <u>Senate Bill 515</u> and open the hearing on <u>Senate Bill 454</u>.

Senate Bill 454: Enacts the Uniform Powers of Appointment Act. (BDR 12-1070)

Assemblywoman Lesley E. Cohen, Assembly District No. 29:

I am honored to be presenting Senate Bill 454 today. This bill enacts the Uniform Powers of Appointment Act. This bill was drafted by the Uniform Law Commission, which is also known as the National Conference of Commissioners on Uniform State Laws, which is an organization composed of volunteer attorney commissioners appointed by the 50 states, U.S. territories, and the District of Columbia. Since 1892, the Uniform Law Commission has drafted nonpartisan legislation in areas of state statutory law where uniformity is necessary. Nevada has a long history of enacting over 100 uniform acts like the Uniform Commercial Code, which is usually the most famous act that everyone knows, the Uniform Transfers to Minors Act, and the Uniform Anatomical Gifts Act. Yesterday this Committee heard a bill that will make revisions to the Uniform Deployed Parents Custody and Visitation Act, which Nevada has already passed. Nevada passes these acts because they are good for our citizenry. Like Vice Chairman Ohrenschall, our Committee counsel, Mr. Wilkinson, several other legislators, staff attorneys, and I are members of this Commission. I was appointed after my first term in the Legislature.

Assemblyman Ohrenschall has asked me to give you a taste of what it is like to serve on a drafting committee. I currently serve on the Uniform Parentage Law Redrafting Committee. Along with commissioners, there are top practitioners in the field, law professors, judges, and stakeholders who serve on these committees. We meet in person and telephonically several times on a given act to draft the best possible law. What we are doing is going line by line contributing from our varied experiences. A separate style committee then vets the laws and along the way, the full commission, consisting of commissioners from all the 50 states, territories, and the District of Columbia, have an opportunity to debate whatever act is being considered. It is a humbling and unique experience because you see the best practitioners from across the country working together to try and give people laws that they can take back to their states to give to their Legislatures to help their communities.

I will now turn it over to Assemblyman Ohrenschall to discuss this particular act and why we think it would be beneficial for our state.

Assemblyman James Ohrenschall, Assembly District No. 12:

This is called the Uniform Powers of Appointment Act. As of today it has been enacted in seven jurisdictions—Colorado, Missouri, Montana, New Mexico, Utah, North Carolina, and Virginia—and is being considered in three other jurisdictions, including Nevada.

This bill address the powers of appointment, which are used across the country by wills and trust estate attorneys. At present, there is little statutory guidance. These powers of appointment are common tools used by estate planning attorneys to help their clients plan for an unknown future. A quick example; John and Jane Doe have three minor children and they want to write a will to ensure that their children will be provided for in the event of their early death. Mr. and Mrs. Doe could leave their assets to the children in equal shares, but that type of simple will does not take future uncertainties into consideration. What if one child shows great academic promise in the future, or what if another child develops a life-threatening disease that requires a lot of medical attention? Mr. and Mrs. Doe might not wish the children to inherit an equal share in these cases. Mr. and Mrs. Doe could give a power of appointment to a trusted adult relative allowing them to allocate the parents' funds among the children according to their future needs. This tool allows Mr. and Mrs. Doe to defer the allocation decision to a future date when the children's individual needs and circumstances will be more certainly known.

While the use of powers of appointment is common in every state, there is almost no statutory law governing the creation, exercise, or revocation of powers of appointment. Instead, estate planners have relied on a patchwork of state court decisions. This act, the Uniform Powers of Appointment Act, attempts to codify the existing common law into statutory form, providing greater certainty for Nevada estate planners and their clients, and preventing expensive and unnecessary litigation. It is my belief that Nevada citizens would benefit from clearer statutory governing rules and Nevada courts will benefit from

a reduction in caseloads due to that current uncertainty. Additionally, Mr. Chairman and members of the Committee, I want to point out that while this act relies on this patchwork of state common-law decisions, it also turned to the restatement and relies on that heavily as well. In preparing for the hearing of this bill in the Senate, I did ask the Legal Division whether anything in <u>S.B. 454</u>, the Uniform Powers of Appointment Act, is contrary to Nevada precedent. The answer was no, because there is no Nevada precedent regarding powers of appointment. This will actually provide a good statutory framework for this very useful estate planning tool.

I do not practice in this area, and I think the only will I have drawn up was on a bar exam. I do not claim to be an expert, but I do want to briefly go through the measure. Sections 1 through 22 contain general provisions and definitions. Sections 23 through 29 govern the creation, revocation, and amendment of powers of appointment. Sections 30 through 43 govern the exercise of a power of appointment. Sections 44 through 50 govern the disclaimer or release of a power of appointment. Sections 51 through 54 govern the rights of a creditor of a holder of a power of appointment with respect to property subject to the power.

With your indulgence, Melissa Exline, who is a practitioner in this area, has joined us today in support of the measure. Additionally, Jeremy Cooper, an estate planning attorney from Las Vegas has written a letter in support of the bill, and that is posted on the Nevada Electronic Legislative Information System (NELIS) (Exhibit C).

Melissa Exline, Attorney, Surratt Law, Reno, Nevada:

I am an estate planning and family law attorney in Reno. I began working on estate planning as an extension of servicing our family law clients, and it has grown into an area of law I enjoy practicing and have been doing since 2008.

The words "power of appointment" can be a bit confusing if you do not have familiarity in the area of estate planning. What is this and what exists presently in our legal system? What we have right now at our disposal for the purposes of transitioning property is you can gift property outright during your lifetime, you can bequest property in a will or trust, and you can also hold it in trust so that it distributes through the fiduciary process of a trust. What the power of appointment does, in addition to those existing tools, is it allows for a person or couple to say I am going to give a specific person the ability to dole out property as they see fit under specific circumstances. What this statute does that we do not presently have codified under the *Nevada Revised Statutes* (NRS) is it clarifies the exact roles of each party in that process. Right now what we are relying on is a patchwork of information and a restatement. This tool is utilized by estate planning attorneys.

An example of how an estate planning attorney would put a power of appointment in existing estate planning documents would be if I am giving some specific asset to my children and want to have it eventually flow over to my grandchildren. I may say I am going to give this property in trust to my children to utilize during their lifetime. You can do with it what you will, in your will to your own children, but it gives the flexibility for your children to decide what makes sense based on the circumstances at the time. There is more flexibility and opportunity to craft that gifting through the power of appointment based on the circumstances that might exist 10 to 30 years or so down the road. It allows that flexibility to modify the gift based on the circumstances that are appropriate for the family at that time. It allows more flexibility for gifting without the restrictions that are currently very stringent under a specific trust gifting. You have to follow that fiduciary standard as a trustee, and that is inflexible. That is good and bad, but you need it in certain circumstances, and there may be other circumstances you would want a different opportunity to do things based on the circumstances that may exist at the time. This clarifies the specific rules of each party and how it can be changed, and we do not currently have that flexibility.

We do have some modest reference to power of appointment in existing statute. One example is in NRS 162A.100 that defines "presently exercisable general power of appointment." That is about all we have, and it is very general. This uniform act provides more clarity and will aid an estate planning practitioner with their questions on how to use a power of appointment or if there is a dispute, these statutes will resolve disputes and answer questions that could arise while right now we are waffling through.

Assemblyman Pickard:

As we discussed in yesterday's hearing, we know that sometimes we deviate from it. Did we deviate in any way from the Uniform Law Institute language, or is it verbatim?

Assemblyman Ohrenschall:

In my review of <u>S.B. 454</u>, and comparing it with the Uniform Powers of Appointment Act, I have not found any deviation. There are a couple of paragraphs where the order is a little different, and I think that is just our Nevada drafting style. If it is there, I did not catch it.

Chairman Yeager:

Thank you for your presentation this morning. We will now open the hearing for testimony in support. [There was none.] Is there anyone in opposition? [There was no one.] Is there anyone in the neutral position? [There was no one.] Any concluding remarks from our presenters?

Assemblyman Ohrenschall:

Thank you again for hearing this measure. I think Assemblywoman Cohen put it best when she said "some of those great legal minds in the Commission." I exclude myself anytime I mention that, but I am honored to be part of that and to be able to work with them. I hope the Committee will consider processing this bill.

Chairman Yeager:

We will close the hearing on <u>S.B. 454</u> and will open the hearing for public comment. [There was none.] This meeting is adjourned [at 9:45 a.m.].

	RESPECTFULLY SUBMITTED:
	Janet Jones
	Committee Secretary
APPROVED BY:	
Assemblyman Steve Yeager, Chairman	
DATE	

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

<u>Exhibit C</u> is a letter dated April 12, 2017, authored by Jeremy Cooper, Attorney, Cooper/Coons Attorneys at Law, Las Vegas, Nevada, in support of <u>Senate Bill 454</u>.