

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Eighty-Second Session
May 5, 2023**

The Committee on Judiciary was called to order by Chair Brittney Miller at 9:07 a.m. on Friday, May 5, 2023, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/82nd2023.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Brittney Miller, Chair
Assemblywoman Elaine Marzola, Vice Chair
Assemblywoman Shannon Bilbray-Axelrod
Assemblywoman Lesley E. Cohen
Assemblywoman Venicia Considine
Assemblywoman Danielle Gallant
Assemblyman Ken Gray
Assemblywoman Alexis Hansen
Assemblywoman Melissa Hardy
Assemblywoman Selena La Rue Hatch
Assemblywoman Erica Mosca
Assemblywoman Sabra Newby
Assemblyman David Orentlicher
Assemblywoman Shondra Summers-Armstrong
Assemblyman Toby Yurek

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator James Ohrenschall, Senate District No. 21

Minutes ID: 979



STAFF MEMBERS PRESENT:

Marjorie Paslov-Thomas, Committee Policy Analyst
Bradley A. Wilkinson, Committee Counsel
Devon Kajatt, Committee Manager
Aaron Klatt, Committee Secretary
Ashley Torres, Committee Assistant

OTHERS PRESENT:

Alan D. Freer, Co-Chair, Legislative Committee of the Probate and Trust Section,
State Bar of Nevada

Chair Miller:

[Roll was called. Committee rules and protocol were explained.] Good morning, everyone. Welcome to Assembly Judiciary. We do have a few changes; originally there were two bills to be heard, but we are now having one bill heard and one work session. Also, you will notice that we do not have Ms. Thornton with us today. Instead, we have Ms. Thomas standing in as our policy analyst. Ms. Thomas generally works in Assembly Commerce and Labor. We will open with our work session on Senate Bill 171, and Ms. Thomas, I will have you take us through that bill, please.

Senate Bill 171: Revises provisions governing firearms. (BDR 15-649)

Marjorie Paslov-Thomas, Committee Policy Analyst:

Senate Bill 171 revises provisions governing firearms [[Exhibit C](#)]. It was sponsored by Senator Harris, heard on April 6, 2023, and there are no proposed amendments.

Chair Miller:

Members, are there any questions on the bill? Not seeing any questions, I will go ahead and take a motion to do pass Senate Bill 171.

ASSEMBLYWOMAN MARZOLA MADE A MOTION TO DO PASS
SENATE BILL 171.

ASSEMBLYWOMAN CONSIDINE SECONDED THE MOTION.

Chair Miller:

Are there any additional questions or comments?

Assemblyman Gray:

I understand what is trying to be done, and we all want to live in a safer society. However, we have so many gun laws on the books now, I would be much more in favor of putting more money into getting the illegal guns off the streets and getting them away from the people who

should not have them rather than creating new categories of people who would have guns illegally and making new laws to restrict people from having guns. With that, there is no way I can support this one at this time.

Chair Miller:

Anyone else? [There was no one.] Well, with that, we will vote.

THE MOTION PASSED. (ASSEMBLYMEN GALLANT, GRAY, HANSEN, HARDY, AND YUREK VOTED NO. ASSEMBLYWOMAN BILBRAY-AXELROD WAS ABSENT FOR THE VOTE.)

I will give that floor statement to Majority Leader Jauregui. With that, we can go on to our next item which is Senate Bill 407 (1st Reprint). This bill is sponsored and presented by Senator Ohrenschall and Mr. Alan Freer, who is with us in Las Vegas as a copresenter. With that, Senator, your hearing is open, and please proceed when you are ready.

Senate Bill 407 (1st Reprint): Revises provisions relating to personal financial administration. (BDR 12-959)

Senator James Ohrenschall, Senate District No. 21:

It is good to be back here. I was a former vice chair of this Committee and served on this Committee every session I served in the Assembly; I have lots of great memories. Yesterday, former Assemblywoman Francis Allen was up here; we both served on this Committee in the 2007 Session. We were reminiscing about Pat Hutson who had been her teacher in high school and worked with me in the Legislature.

I am presenting Senate Bill 407 (1st Reprint) today, which is a bill having to do with trusts and estates, something most of us do not want to have to think about, but everyone should, and everyone should really consult with an attorney who is skilled in this area. As most of you know, I practiced as a deputy public defender in juvenile court, and you are probably asking, why is he carrying a bill regarding trusts and estates? I bet Senator Ohrenschall has never written a will or trust in his legal career. Well, you would be right, I have never written a will or trust in my legal career, and I struggled to get a grade of C in trust and estate over at University of Nevada, Las Vegas (UNLV) with Professor Higdon a long time ago, but I have always been interested in this subject, and I think it is very important. I was lucky enough this session to be asked by the State Bar of Nevada Probate and Trust Law Section to work on their bill, which has undergone about 18 months of vetting, and been approved by both the State Bar Board of Governors and by the State Bar Probate and Trust Section. A lot of hard work by some of our finest trust and estate attorneys in the state went into Senate Bill 407 (1st Reprint).

There is an executive summary which is on the Nevada Electronic Legislative Information System (NELIS) which sums up a lot of the sections. There is also a friendly amendment on NELIS proposed by the Probate and Trust Section [[Exhibit D](#)]. One of those great minds and practitioners in trust and estate law here in our state is with us at the Grant Sawyer building,

Mr. Alan Freer. I would ask your indulgence in allowing him to walk us through the bill, and then I am happy to try to answer any questions, as well as potentially use my lifeline to Mr. Freer if I need it.

Chair Miller:

Absolutely.

Alan D. Freer, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada:

I am pleased to present a bill that has been drafted and sponsored by the Probate and Trust Section of the State Bar. Probate is an important aspect of the law; unfortunately, death touches us all, and it is at this most difficult time when we are most vulnerable. Due to that, we need laws to reflect what our Nevada residents need. We need clear processes and procedures that allow families who are in a period of grief to have a path that is free of unnecessary stress while at the same time, appropriate to protect assets and enforce obligations. In addition, tax laws at the federal level change, alter, and evolve regularly with each new tax bill. Keeping our laws current in connection with not only state and local issues but also with a focus on national-level taxation issues, helps our residents plan for the future.

Nevada has developed an outstanding status nationally and worldwide as a place for establishing trusts because of how our Legislature responds to new issues, maintains laws, and how our courts have been very supportive of the Legislature's laws that have been passed. This provides stability for our trust and estate residents. A couple of issues that have come up as to why probate law is more important these days with maintaining these laws is that residents are very mobile and often have plans not only in this state but in many states, and they move back and forth between states. This is simply a reality of our times due to the mobility of Nevada residents. Without clear laws, this can create conflicts in the applicable laws, absent maintaining current laws that address these issues that would otherwise result in more litigation and difficulties. Rights to privacy to protect against identity theft are all new to the area of probate; unfortunately, thieves and scammers have become savvy to checking probate court records for potential victims who have inherited money. Absent updates, we find that the current laws require mandatory disclosures of highly sensitive material, of not only addresses, names of beneficiaries, but also amounts that they would be receiving. With the advent of open online access to court records, thieves and scammers can gain access to the sensitive information without a lot of effort because it is all electronically searched and easily accessed. This puts our seniors, young people, and all of us at risk.

With this overview of the importance of probate law in mind and due to the Legislature's vigilant amendments, Nevada does rank as one of the top three states in the nation with respect to the rapidly evolving laws governing trusts and estates. Senate Bill 407 (1st Reprint) was drafted to keep pace with this evolution to streamline the administrative process and to ensure that a person's wishes set forth in an estate plan are honored to the greatest extent possible by law.

There are four general objectives with S.B. 407 (R1): one, clarify laws relating to trusts and estates; two, remain current as one of the top three leading jurisdictions for trust and estates; three, streamline the probate and trust administration process; and four, shore up safeguards to prevent abuses. We thank the members of the Committee for considering and passing the Probate and Trust Section's bill each session. I would like to thank Vice Chair Marzola once again for sponsoring last year's trust and estate bill, which was A.B. 318 of the 81st Session. With that, I will move into an overview of the various sections of the bill [[Exhibit E](#)].

There are 18 sections. Section 1 amends the jurisdiction and venue statute for estates, which is *Nevada Revised Statutes* (NRS) 136.010, to distinguish and clarify between the separate legal requirements of jurisdiction and venue. Sections 2 and 3 of the bill amend the support of family and small estate statutes, NRS 146.050 and 146.070, to clarify the relevant needs and resources to be considered in establishing a probate homestead. Section 3 provides a mechanism to manage and set aside proceedings—which are generally for small estates—more efficiently. This is done by giving the court an additional tool for appointment of a specific person other than the personal representative to execute, set aside documents and deeds, and pay bills that are authorized through the court proceeding. The goal of this amendment is to maximize the amount of assets going to the beneficiaries of a small estate and by minimizing administrative hurdles.

Sections 4 and 5 amend the sales, conveyances, and exchanges statutes under the probate code to increase efficiency by eliminating unnecessary correspondence with persons who have no interest in the property being sold. At present, an appraisal of real property in a probate proceeding could only be waived by the consent of all beneficiaries or heirs to the estate even if they would not otherwise receive the property or receive the proceeds of that property. This section is intended to limit the waiver procedure only to those who are interested in the proceeds of the house or the house itself. This is consistent with the rest of the probate code that only requires notice to interested persons under NRS 132.185.

Section 6 is a technology update that amends notice provisions of NRS 155.010 to permit electronic service where available in the district courts to streamline administration. Sections 7, 9, and 16 of the bill provide further clarity to declaratory relief statutes. Section 7 amends the declaratory relief statute to make clear that an "interested person" as defined in NRS 132.185 may request relief. Likewise, sections 9 and 16 add new sections in NRS Chapters 163 and 164 to define, establish, and reinstate the capacity of a trustee.

Section 11 is essentially a tax and trust law clarification to better define a support interest under a trust as providing a mandatory requirement to support a beneficiary; whereas before, it was ambiguous and caused potential issues with federal tax law. Section 12 is designed to keep up with the evolving area of trust law regarding trust protectors, which is a relatively new tool in the toolbox for trust planning. This amendment to NRS 163.5553 provides that a trustee may impose or release fiduciary obligations on a trust protector as provided in the instrument and further sets a default rule that in the absence of specific language, trust protector responsibilities are fiduciary in nature, which imposes a higher standard of care.

Section 13 is drafted to streamline the court process and further protect beneficiaries of trusts from having their private information become public. These sections provide a statutory right in favor of those beneficiaries to keep confidential certain information relating to a trust that otherwise would be required to be disclosed as public record in trust proceedings. Presently, such disclosures are open to public view until a motion to seal is granted by the court, which, often down here in Clark County especially with the advent of COVID-19, is a lag time of approximately three to four months before a court can hear and enter an order in probate proceedings. This statute or this section would allow for that information to become confidential at the outset. These proposals were created after canvassing other states' treatments of beneficiaries' private information and would provide an adequate middle ground between states that go too far—in my opinion—in granting privacy such as South Dakota, where they have all trust proceedings automatically sealed for the entire proceeding as opposed to just the confidential information. You may contrast that with states that have no laws to protect beneficiaries. The district court under this section would still have discretion and final say regarding the privacy of information; it just provides an automatic and temporary confidentiality issue until the matter comes before the court.

Section 14 is the most expansive clarification in the bill. It amends NRS 164.010 in light of the constitutional long-arm jurisdiction concerns raised by the Nevada Court of Appeals and Nevada Supreme Court, and it clarifies when and how a court assumes jurisdiction and what factors are relevant for determining venue. Section 15 clarifies what information a trustee is required to provide a beneficiary in a notice of irrevocability under NRS 164.021. Sections 16 and 17 are technical corrections to the Uniform Principal and Income Act (1997) to fix inadvertently omitted language and expressly provide that a trustee is exonerated from taking action under the Uniform Principal and Income Act (1997); whereas before, there was only the negative implication because the express language stated the trustee was exonerated for failing to take action under these statutes.

With that, we do have, as Senator Ohrenschall noted, a friendly amendment that the Probate and Trust Section of the State Bar has provided in response to a concern raised by the Nevada Press Association [[Exhibit D](#)]. Presently, section 13, subsection 4, paragraph (f) permits a court discretion to order other documents, confidential in a trust proceeding; it is a catchall provision. The proposed amendment would add an additional requirement on the court to make a finding that the confidentiality of such additional documents outweighs the public interest. The way this amendment would set up is, within section 13, subsection 4, paragraphs (a) through (e) there is automatically deemed confidential information. A new paragraph (i) would give the court further ability to deem information confidential under that statute, but only if it makes that weighing consideration. The Probate and Trust Section appreciated the concerns raised by the Nevada Press Association, and that is what engendered the proposed amendment. With that, I will turn it back over to Senator Ohrenschall.

Senator Ohrenschall:

I appreciate Mr. Freer walking us through the bill. I am happy to answer any questions.

Chair Miller:

My first question is regarding the amendment. I see on NELIS there was an amendment that was adopted, Senate Amendment No. 425; however, during the presentation was there the intent to allude to another amendment that was coming?

Senator Ohrenschall:

I am holding a one-page amendment to Senate Bill 407 (1st Reprint) proposed by the Probate and Trust Section [[Exhibit D](#)]. I believe it has been submitted to be on NELIS but if not, I apologize, and I do have copies of that amendment here.

Chair Miller:

In fact, it just appeared on NELIS. We have it now. Members, go ahead and take a few minutes to review. I believe that the amendment is regarding what Mr. Freer was referring to, correct?

Senator Ohrenschall:

That is correct. Section 13, subsection 4, paragraph (i) after, "any other information ordered by the court," there is that additional language that says where the public interest is outweighed by confidentiality.

Chair Miller:

Thank you. Members do have some questions.

Assemblywoman Summers-Armstrong:

Thank you, Senator Ohrenschall, for this interesting bill. I am always concerned about electronic notice. Can you explain your recap of section 6 [[Exhibit E](#)] where you said, "to permit electronic service where available"? How are you all confirming the desire for electronic notice on these issues? In many cases, some of the folks who are involved could be seniors or people who might have limited access. Therefore, if you can explain to me how you are determining when to use electronic notice.

Alan Freer:

The court has rules for each judicial district that govern the electronic filing requirements and electronic service of documents. In each of those jurisdictions that I am aware of, there are provisions for people who do not have electronic means for them to still receive documents or to get assistance to have them electronically recorded. The problem we have is in the statutes themselves, as they only talk about notice being sent; they do not make any distinction for electronic notice. Therefore, what we are trying to do with this section is bring it in line, that electronic service permissible under the court rules in each of those jurisdictions also serves as good notice for notice provisions such as NRS 155.010.

Assemblywoman Summers-Armstrong:

In your summary [[Exhibit E](#)], you said, "to permit electronic service where available"; are you speaking of serving the document on someone, like a notice, or are you talking about filing? I think that is where I am concerned, because in section 6, subsection 1,

paragraph (b), it specifically speaks to the Nevada Electronic Filing and Conversion Rules, but in your executive summary, you say "service," and I see those as two different things. Filing or pleading is one thing, but serving someone notice is something else, or am I a little bit confused?

Alan Freer:

No, you are not confused. There are two separate electronic filings and service provisions under each judicial district, but the issue on the statutes is not necessarily filing because that is obviously a judicial function. However, we have issues come up when you do an electronic filing, you are required to give electronic notice to those people who have been implemented into this system for that particular case. For example, when you make an appearance and you file a document electronically, in order to file that document electronically, you are deemed to have consented to electronic service under those rules. However, even though the courts say you have been deemed to accept service under those rules, we do not really have the corresponding statutes that do that. Basically, when we say, "where available," that just means in jurisdictions that allow for electronic filing, and the service would occur in coordination with that.

Assemblywoman Cohen:

Mr. Freer, I do not have a question about a specific line, but now that you are revising some of the terms having to do with jurisdiction, how does that mesh with jurisdiction from other states? Is there a possibility of a conflict between states, and how is that addressed when two different states could have jurisdiction?

Alan Freer:

With respect to the jurisdictional issues, trust and estate proceedings talk about assuming jurisdiction primarily in rem because we are talking about governing and administering property, and that is under the Supreme Court doctrine of in rem jurisdiction. There is also a personal jurisdiction component that people who are appearing, who are administering, or that are beneficiaries or who are otherwise interested, the court also has personal jurisdiction over those people. The typical laws of other states are that once a court assumes in rem jurisdiction, it has assumed jurisdiction to the exclusion of any other state, and that is a U.S. Supreme Court policy. Currently, we already have in place that upon assuming in rem jurisdiction, Nevada now is the place of jurisdiction for all aspects of that property. We also currently have in place a statute that says that is retroactive to the time of filing as opposed to the court order, and that was done several sessions ago to prevent increasingly races to the courthouse between jurisdictions.

The Nevada Court of Appeals, in the *Minami v. Song* decision, recently upheld that statute that provided for retroactive effect. In essence, there is some varying degree of laws between states with respect in assuming jurisdiction, but the changes we have made clarify the jurisdictional stuff because before there was some muddying of jurisdiction and venue. Nonetheless, they are consistent with what our Nevada Supreme Court has upheld, and they are consistent with the U.S. Supreme Court findings on in rem jurisdiction.

Chair Miller:

Not seeing any additional questions, I will go ahead and open it up for testimony in support of Senate Bill 407 (1st Reprint). [There was none.] Is there anyone that would like to testify in opposition to Senate Bill 407 (1st Reprint). [There was no one.] Then I will open it up for anyone wishing to testify in neutral. [There was no one.] Senator, would you like to make any final remarks?

Senator Ohrenschall:

Thank you to Mr. Freer for having to handle all the tough questions. I think our UNLV Professor Michael Higdon would be proud seeing me present a probate and trust bill with one of the greats, like Mr. Freer. We thank the Committee for their time. I believe the bill will help our constituents, especially when they have lost a loved one and are trying to sort out the probate issues with the trusts and wills. I hope the Committee will consider moving forward with it.

Chair Miller:

With that, I will go ahead and close the hearing on S.B. 407 (R1). Our last item today will be public comment.

[There was no public comment.]

With that, we will go ahead and close public comment. Our next meeting will be 9 a.m. on Monday morning, see you all then. Have a great weekend. This meeting is adjourned [at 9:38 a.m.].

RESPECTFULLY SUBMITTED:

Aaron Klatt
Committee Secretary

APPROVED BY:

Assemblywoman Brittney Miller, Chair

DATE: _____

EXHIBITS

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.

[Exhibit C](#) is the Work Session Document for Senate Bill 171, presented by Marjorie Paslov-Thomas, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

[Exhibit D](#) is a proposed amendment to Senate Bill 407 (1st Reprint), presented by Alan D. Freer, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada.

[Exhibit E](#) is a document titled "Executive Summary SB407," dated May 4, 2023, submitted by Alan D. Freer, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada; and Michaelle Rafferty, Co-Chair, Legislative Committee of the Probate and Trust Section, State Bar of Nevada, regarding Senate Bill 407 (1st Reprint).