

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY COMMITTEE

Tuesday, August 12, 2008
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Lawrence R. Klemin, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Lawrence R. Klemin, Stacey Dahl, Lois Delmore, Brenda Heller, William E. Kretschmar, Jasper Schneider, Lisa Wolf; Senators Stanley W. Lyson, Carolyn Nelson, Dave Nething, Dave Oehlke, Curtis Olafson

Members absent: Representatives Randy Boehning, Joyce Kingsbury, Kim Koppelman; Senator Tom Fiebiger

Others present: Representative Lee Kaldor, member of the Legislative Council, was also in attendance.

See attached [appendix](#)

It was moved by Senator Nelson, seconded by Representative Schneider, and carried on a voice vote that the minutes of the April 15, 2008, meeting be approved.

UNIFORM LAWS

Chairman Klemin called on Mr. Jay E. Buringrud, Commissioner, North Dakota Commission on Uniform State Laws, for testimony regarding the recommendations of the commission for the 2009 legislative session. Mr. Buringrud said the North Dakota Commission on Uniform State Laws met during the annual meeting of the National Conference of Commissioners on Uniform State Laws to determine which uniform or model Acts to recommend to the next session of the Legislative Assembly. He said as the result of its meeting on July 21, 2008, the commission recommends the following Acts be introduced in the 2009 legislative session:

- Amendment to Section 21 of the Uniform Anatomical Gift Act approved by the Executive Committee of the national conference in 2008.
- Amendments to the Uniform Interstate Family Support Act approved by the national conference in 2008. The amendments are proposed because the Uniform Interstate Family Support Act is tied to a federal mandate enacting the 2000 Hague Convention on Maintenance, which was signed by the President in 2008. The amendments modify the current version of the Act's international provisions to comport with the obligations of the United States under the convention. The federal enacting legislation states that a version of this Act must be passed by 2010.

- Amendments to the Uniform Principal and Income Act approved by the national conference in 2008. The amendments will bring the Uniform Principal and Income Act into compliance with Internal Revenue Service comments regarding allocation of IRA distributions in Section 409 and clarify the formula for calculating how much a trust needs to distribute and how much it can use to pay taxes.
- Amendments to the Uniform Probate Code approved by the Executive Committee in 2008 and amendments to the Uniform Probate Code approved by the national conference in 2008, except for the provisions for cost-of-living adjustments. The amendments update the intestacy provisions of the Uniform Probate Code which deal with inheritance by children.
- Uniform Adult Guardianship and Protective Proceedings Act. This Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings and provides a mechanism for resolving multistate jurisdictional disputes arising because there are more than 50 guardianship systems in the United States.
- Uniform Debt-Management Services Act, including the 2008 technical amendments. This Act applies to consumer debt counseling services and debt-management services and provides for registration requirements, bond requirements, and disclosure requirements.
- Uniform Emergency Volunteer Health Practitioners Act. This Act allows reciprocity to other states' licensees on emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements, specifically the problem of allowing out-of-state medical professionals to practice in the afflicted areas.
- Uniform Prudent Management of Institutional Funds Act. This Act provides statutory guidelines for management, investment, and expenditures of endowment funds held by charitable institutions, and expressly provides for diversification of assets, pooling of assets, and total return investment, to implement whole portfolio management.

- Uniform Revised Limited Liability Company Act. This Act permits formation of limited liability companies, which provide the owners with the advantages of both corporate-type limited liability and partnership tax treatment.

Mr. Buringrud said upon being placed in bill draft form, the commission will distribute the uniform Acts to the State Bar Association of North Dakota and other interested entities for review before the 2009 legislative session. He submitted written [testimony](#), a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Buringrud said the commission adopted all of the aforementioned Acts unanimously. He said unless the commission makes a decision to withhold any of the Acts, all will be introduced in the 2009 legislative session. He said the Uniform Emergency Volunteer Health Practitioners Act deals with liability and licensing of medical professionals in other jurisdictions during disasters. He said this Act does not address the liability of users of automated external defibrillators.

Chairman Klemin requested that copies of the completed bill drafts be distributed to members of the Judiciary Committee. He said copies of each of the recommended Acts are currently available at www.nccusl.org/Update/.

STATUTORY REVISION

At the request of Chairman Klemin, committee counsel presented a bill draft [\[90213.0100\]](#) regarding technical amendments to the North Dakota Century Code. She said the bill draft makes technical corrections, including improper, inaccurate, redundant, missing, or obsolete references. She said any additional corrections that may arise between now and the introduction of the bill draft will be offered as amendments during the legislative session.

It was moved by Senator Nething, seconded by Representative Delmore, and carried on a roll call vote that the bill draft relating to the technical corrections to the North Dakota Century Code be approved and recommended to the Legislative Council. Representatives Klemin, Dahl, Delmore, Heller, Kretschmar, Schneider, and Wolf and Senators Lyson, Nelson, Nething, Oehlke, and Olafson voted "aye." No negative votes were cast.

GAMING COMMISSION STUDY

At the request of Chairman Klemin, committee counsel presented a revised bill draft [\[90024.0200\]](#) regarding the creation of a gaming advisory commission. She said changes to the bill draft included changing the membership from five members to seven members, revising the qualifications of commission members, and changing the mandatory meetings from quarterly to twice per year. She said the revised bill draft also provides that the members of the gaming advisory commission are entitled to

receive the same pay as legislators receive for attending interim meetings.

Chairman Klemin called on Mr. James P. Wang, Chairman, State Gaming Commission, for testimony regarding the bill draft. Mr. Wang said members of the State Gaming Commission believe that the commission serves an important function and should not be eliminated. He said the role of the proposed gaming advisory commission would be to advise the Attorney General. He said the function of the State Gaming Commission is to adopt gaming rules. He said under the bill draft, the Attorney General would be given this authority. He said there is currently a volunteer Gaming Advisory Board that serves in the capacity of providing advice to the State Gaming Commission and the Attorney General. He said this advisory committee provides information from the gaming industry and works to promote the industry. He said the proposed gaming advisory commission would not serve the same purpose. He said the State Gaming Commission has streamlined the gaming process and has worked hard to refine the administrative rules for charitable gaming. He said if the State Gaming Commission was eliminated, the benefit that the State Gaming Commission provides to the Legislative Assembly and the Attorney General would be lost. He said the proposed advisory commission would only be a sounding board and would not have any real authority. He said the State Gaming Commission provides the gaming industry with representation.

In response to a question from Representative Klemin, Mr. Wang said the function of the State Gaming Commission is not a meaningless function. He said the commission provides a great service at a low cost. He said he was aware of the gaming commission study being conducted by the Judiciary Committee.

Chairman Klemin called on Ms. Lois Ivers Altenberg, State Gaming Commission, for testimony regarding the bill draft. Ms. Ivers Altenberg said she is proud of the work of the State Gaming Commission. She said the members of the commission are appointed by the Governor and must be approved by the Senate. She said the bill draft would give all the authority for selection of the gaming advisory commission members to the Attorney General. She said she does not support the elimination of the State Gaming Commission.

In response to a question from Representative Klemin, Ms. Ivers Altenberg said the bill draft concentrates all the power for the commission with the Attorney General. She said the bill draft diminishes the power of the Legislative Assembly and the Governor. She said the current Gaming Advisory Board meets at the same time as the State Gaming Commission. She said the Gaming Advisory Board provides valuable recommendations to the State Gaming Commission.

In response to a question from Representative Klemin, Ms. Ivers Altenberg said she only recently

became aware of the proposed elimination of the State Gaming Commission.

Chairman Klemin called on Ms. Sophia Preszler for testimony regarding the bill draft. Ms. Preszler said she is appalled that there is a state gaming commission. She said any claim that gaming helps charities is untrue.

Chairman Klemin called on Mr. Blake Krabseth, State Gaming Commission, for testimony regarding the bill draft. Mr. Krabseth said he would have been willing to look at the possibility of a "super" commission that regulated all types of gaming. He said the State Gaming Commission's rulemaking authority has a check and balance procedure in place because all rules must be approved by the Administrative Rules Committee. He said the State Gaming Commission structure is very efficient. He said the commission receives valuable information about what is happening in the gaming industry from the gaming advisory board.

Chairman Klemin called on Ms. Karen Breiner, Charitable Gaming Association of North Dakota, for testimony regarding the bill draft. Ms. Breiner said she is a member of the Gaming Advisory Board. She said the gaming industry is satisfied with the current structure. She said the charities are concerned that they may lose their voice in the gaming industry if the changes in the bill draft are made.

Chairman Klemin called on Ms. Terri Leier-Sprenger, Fargo, for testimony regarding the bill draft. Ms. Leier-Sprenger said she is a gaming auditor and also serves as a volunteer member of the Gaming Advisory Board. She said many people in the gaming industry are in attendance at the meeting. She said the current gaming structure works well.

COMMITTEE DISCUSSION

At the request of Chairman Klemin, committee counsel distributed information to the committee regarding the number of clients served by Lutheran Social Services using funds deposited in the compulsive gambling treatment fund. She said the information is the result of a request made to Mr. Chuck Keller at the last meeting of the committee. A [copy](#) of this information is on file in the Legislative Council office.

Senator Nething said the bill draft does not address the issue of creating a single gaming commission to regulate all types of gaming in the state. He said there does not appear to be a valid reason for eliminating the State Gaming Commission and replacing it with an advisory commission.

It was moved by Senator Nething, seconded by Senator Nelson, and carried on a roll call vote that the bill draft regarding the creation of a gaming advisory commission and the elimination of the State Gaming Commission not be recommended to the Legislative Council. Representatives Klemin, Dahl, Delmore, Heller, Kretschmar, Schneider, and Wolf and Senators Lyson, Nelson, Nething, Oehlke,

and Olafson voted "aye." No negative votes were cast.

STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM

At the request of Chairman Klemin, committee counsel presented a bill draft [\[90235.0100\]](#) relating to the statewide automated victim information and notification (SAVIN) system. She said the bill draft makes the changes to the North Dakota Century Code which will be necessary upon implementation of the SAVIN system. She said the bill draft provides that some of the notification duties that are currently the responsibility of certain entities, including prosecuting attorneys, courts, or custodial authorities would be automated under the SAVIN system.

Chairman Klemin called on Ms. Linda Isakson, North Dakota Council on Abused Women's Services, for testimony regarding the bill draft. Ms. Isakson said she was concerned that the automated system may affect some of the victim's rights that are provided for in current law. She said she is especially concerned about the notification of pretrial release. She said if a victim must be registered to be notified, some victims may not get the notification. She said there are some victims who do not want to release their notification information to anyone out of the fear that the offender may gain access to the information.

In response to a question from Senator Lyson, Ms. Isakson said victim advocacy organizations may be able to notify and inform victims about certain information regarding the offender. She said some victims move often and may not have access to the automated system. She said the advocacy organizations may be willing to assume the liability for informing victims. She said there will be victims who will choose not to be registered.

In response to a question from Representative Klemin, Ms. Isakson said under the SAVIN system, victims who do not register will not receive the notice they are entitled to receive. She said the current notification system should remain in place regardless of whether the SAVIN system is implemented or not.

In response to a question from Representative Delmore, Ms. Isakson said some victims will not want to register out of a fear of being found. She said it would be helpful if the advocacy organization would be permitted to register with the SAVIN system on behalf of the victim.

Senator Lyson said there are some victims who do not want to be notified.

In response to a question from Senator Oehlke, Ms. Isakson said the bill draft and the SAVIN system change the rights of the victims.

In response to a question from Representative Klemin, Ms. Isakson said there are some victims who may want to be notified by an advocate or a family member rather than directly from the SAVIN system.

In response to a question from Representative Kaldor, Ms. Isakson said some victims will view the registration process as a potential breach of their security.

Chairman Klemin called on Ms. Amy Vorachek, SAVIN Program Manager, Criminal Justice Information Sharing, for testimony regarding the bill draft. Ms. Vorachek said the intention of the SAVIN system is to retain all rights that victims are currently afforded under the current system. She said the reason the bill draft contains references to both "victims" and "registered victims" is that there is some information that the system is not capable of providing in an automated manner. She said some information will continue to be the responsibility of the entity to relay to the victim.

In response to a question from Representative Klemin, Ms. Vorachek said the SAVIN system puts the responsibility on the victim to keep the victim's contact information updated. She said the registration system will allow up to six contact telephone numbers and up to three e-mail addresses. She said the SAVIN system will replace those notification situations that were previously handled by a letter or a telephone call. In other notification situations, she said, there will still be direct notification from an entity.

In response to a question from Senator Olafson, Ms. Vorachek said there will be education efforts made to inform victims and the public about the SAVIN system.

Chairman Klemin called on Ms. Pam Schafer, Criminal Justice Information Sharing, for testimony regarding the bill draft. Ms. Schafer said the SAVIN system is not intended to replace the current notification system but rather it is an additional tool that will be available to make some of the notification process automated and more efficient. She said it is important that listing the specific information that is needed for registration would be limiting. She said the word "address" on page 8, line 20, could be changed to "contact information."

COMMITTEE DISCUSSION

The committee discussed whether the new definition of "registered victim" should include a "registered witness" as well.

It was moved by Senator Oehlke, seconded by Representative Delmore, and carried on a voice vote that the bill draft be amended on page 2, line 26, to provide that "registered victim" or "registered witness" means a victim or witness registered with the statewide automated victim information and notification system.

It was moved by Senator Nething, seconded by Representative Delmore, and carried on a voice vote that the bill draft be amended on page 8, lines 18 through 20, to provide that the victim's

responsibility to provide notification of a change of address may be done personally or through a third party, that the word "address" be changed to "contact information," and to clarify that all information provided must be kept confidential.

It was moved by Senator Nelson, seconded by Senator Lyson, and carried on a roll call vote that the amended bill draft relating to the statewide automated victim information and notification system be approved and recommended to the Legislative Council. Representatives Klemin, Dahl, Delmore, Heller, Kretschmar, Schneider, and Wolf and Senators Lyson, Nelson, Nething, Oehlke, and Olafson voted "aye." No negative votes were cast.

OTHER BUSINESS

Chairman Klemin said, as requested at the last meeting, each committee member had each received a copy of the federal law and regulations regarding the possession of firearms by offenders and other persons.

Committee counsel said the federal Gun Control Act of 1968 provides that it is "unlawful for any person . . . who has been convicted in any court of, a crime punishable by imprisonment for a term of exceeding one year . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition. . . ."

Senator Lyson said the committee has fulfilled its duty by reviewing the state and federal laws on this topic. He said it is possible that current state law is preempted by federal law.

Chairman Klemin thanked the committee members and committee counsel for their hard work and efforts during the interim.

It was moved by Senator Lyson, seconded by Representative Dahl, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council. Representatives Klemin, Dahl, Delmore, Heller, Kretschmar, and Wolf and Senators Lyson, Nelson, Nething, Oehlke, and Olafson voted "aye." No negative votes were cast.

It was moved by Senator Lyson, seconded by Senator Nelson, and carried on a voice vote that the committee be adjourned sine die.

Chairman Klemin adjourned the meeting at 11:45 a.m.

Vonette J. Richter
Counsel

ATTACH:1