

**MINUTES OF THE HOUSE  
BUSINESS AND LABOR  
STANDING COMMITTEE**

Room 405 State Capitol

February 24, 2004

**Members Present:** Rep. Katherine M. Bryson, Chair  
Rep. Michael Morley, Vice Chair  
Rep. J. Stuart Adams  
Rep. Jackie Biskupski  
Rep. Craig W. Buttars  
Rep. David Clark  
Rep. Stephen D. Clark  
Rep. Carl W. Duckworth  
Rep. Jim Dunnigan  
Rep. Ben C. Ferry  
Rep. Neil A Hansen  
Rep. Todd E. Kiser  
Rep. R. Curt Webb

**Staff Present:** Mark Steinagel, Policy Analyst  
Linda Error, Committee Secretary

**Note:** List of visitors and a copy of handouts are filed with committee minutes.

Rep. Bryson called the meeting to order at 7:05 a.m.

**MOTION:** Rep. Hansen moved to approve the minutes of the February 19, 2004 meeting. The motion passed unanimously, with Rep. Biskupski, Rep. Buttars, Rep. S. Clark, Rep. Duckworth, and Rep. Ferry absent for the vote.

**H.B. 148 Optometry Amendments (*Rep. B. Last*)**

Rep. Last explained the bill, assisted by Jay Magure, 1-800-Contacts Inc.

Spoke to the bill: Dale Woodfield, optometrist, Ogden, Utah

**MOTION:** Rep. Adams moved to pass the bill out favorably. The motion passed unanimously, with Rep. S. Clark, Rep. Duckworth, and Rep. Ferry absent for the vote.

**MOTION:** Rep. Morley moved that **H.B. 148** be placed on the Consent Calendar. The motion failed, with Rep. Ferry voting in opposition and Rep. Duckworth absent for the vote.

**1st Sub. S.B. 106 Dishonored Checks - Motor Vehicle Repair Facilities (Sen. D. C. Buttars)**

MOTION: Rep. D. Clark moved to delete in title and body **1st Substitute S.B. 106** and replace it with **2nd Substitute S.B. 106**. The motion passed unanimously, with Rep. Duckworth and Rep. Ferry absent for the vote.

Sen. Buttars explained the bill.

Spoke for the bill: Wayne Jones, Executive Director, Independent Auto Dealers Association

MOTION: Rep. Dunnigan moved to amend the bill as follows:

*1. Page 2, Lines 48 through 50:*

48        (2) A holder of a check that has been dishonored may take possession of a motor  
49        vehicle to recover the amounts owed under Subsection 7-15-1(7) if:  
50        (a) the check amount equals or exceeds. [~~-\$250~~] \$1000 ;

SUBSTITUTE

MOTION: Rep. Kiser moved to amend the bill as follows:

*1. Page 2, Lines 48 through 50:*

48        (2) A holder of a check that has been dishonored may take possession of a motor  
49        vehicle to recover the amounts owed under Subsection 7-15-1(7) if:  
50        (a) the check amount equals or exceeds. [~~-\$250~~] \$750 ;

After committee discussion, Rep. Kiser withdrew the motion.

SUBSTITUTE

MOTION: Rep. Morley moved to amend the bill as follows:

*1. Page 2, Lines 48 through 50:*

48        (2) A holder of a check that has been dishonored may take possession of a motor  
49        vehicle to recover the amounts owed under Subsection 7-15-1(7) if:  
50        (a) the check amount equals or exceeds. [~~-\$250~~] \$500 ;

The substitute motion to amend passed unanimously, with Rep. Duckworth absent for the vote.

MOTION: Rep. Dunnigan called previous question. The motion passed unanimously, with Rep. Duckworth absent for the vote.

MOTION: Rep. Buttars moved to pass the bill out favorably as amended. The motion passed, with Rep. Ferry and Rep. Hansen voting in opposition and Rep. Duckworth absent for the vote.

**H.B. 279 Counterfeit Tobacco Products (Rep. E. Hutchings)**

MOTION: Rep. Buttars moved to amend the bill as follows:

1. *Page 3, Lines 59 through 62:*

59 that ~~[[~~  
60 ~~—(a)—]]~~ evidences payment of the tax on cigarettes required by Section  
59-14-204 ~~[[~~or  
61 ~~—(b) indicates that the cigarettes are intended for a sale or distribution in Utah~~  
~~that is~~  
62 ~~exempt from state tax under Subsection 59-14-204.5(1)]]~~ .

2. *Page 9, Lines 266 through 268:*

266 (1) A person who ships unstamped cigarette packages into the state, other than to a  
267 licensed manufacturer, importer, distributor, or retailer **who is authorized to affix**  
**stamps** , shall first file with the commission a  
268 notice of shipment.

3. *Page 10, Lines 287 through 289:*

287 (2) [[~~Notwithstanding~~]] **In addition to** any other provision of law, the sale  
or possession for sale of  
288 counterfeit cigarettes, as they are defined in Section 59-14-102, by a manufacturer,  
importer,  
289 distributor, or retailer shall result:

4. *Page 10, Lines 290 through 291:*

290 (a) in the seizure by the commission or law enforcement agency of the  
[[~~manufacturer~~]] **manufacturer's** ,  
291 importer's, distributor's, or retailer's:

5. *Page 11, Lines 326 through 327:*

326           (4) (a) The sale or possession for sale of counterfeit cigarettes by a manufacturer,  
327   importer, distributor, or retailer is punishable **by a court of law** as follows:

The motion to amend passed unanimously, with Rep. Duckworth absent for the vote.

MOTION:   Rep. Dunnigan moved to pass the bill out favorably as amended. The motion passed unanimously, with Rep. Duckworth absent for the vote.

**H.B. 298       Residence Lien Recovery Fund Amendments** (*Rep. S. Clark*)

Rep. Clark explained the bill, assisted by Earl Webster, Division of Occupational and Professional Licensing and Ray Walker, Compliance Officer, Division of Occupational and Professional Licensing.

Spoke against the bill:           Taz Biesinger, Home Builder's Association

MOTION:   Rep. Adams moved to amend the bill as follows:

1. *Page 3, Lines 75 through 79:*

75           (1) A person licensed or applying for licensure or renewal as a contractor in license  
76   classifications that regularly engage in providing qualified services shall be exempt from  
77   registration as a qualified beneficiary under Section 38-11-301 if the person signs an  
      affidavit  
78   at the time of licensure or renewal attesting that the person ~~[[does not engage in~~  
      ~~providing~~  
79   ~~qualified services]]~~ **will not file or cause a claim against the Residence Lien**  
      **Recovery Fund** .

SUBSTITUTE

MOTION:   Rep. Biskupski moved to proceed to the next item on the agenda.

Rep. Adams withdrew his motion to amend.

The motion to proceed to the next item on the agenda passed, with Rep. Adams, Rep. Bryson, Rep. S. Clark, Rep. Dunnigan, Rep. Ferry, and Rep Morley voting in opposition.

**1st Sub. S.B. 47       Uniform Trust Code** (*Sen. L. Hillyard*)

MOTION: Rep. D. Clark moved to amend the bill as follows:

1. Page 10, Lines 284 through 300:

284 (c) A restriction provided under Subsection (1) does not prevent a creditor or person  
285 described in Subsection (2)(a) from satisfying a claim or liability out of the settlor's  
beneficial

286 interest in or transfer into trust if:

\* \* \* *Some lines not shown* \* \* \*

300 (vi) the transfer is made when the settlor is insolvent or renders the settlor  
insolvent;

2. Page 11, Line 322:

322 beneficial interest in or transfer into trust under Subsections (2)(c) ~~[(+)]~~, (ii), (v),  
(vii), (viii), (ix),

3. Page 27, Lines 809 through 811:

809 (1) Before distributing to a trustee, the personal representative may require that the  
trust

810 be registered if the state in which it is to be administered provides for registration and that  
the

811 trustee inform the qualified beneficiaries as provided in Section ~~[75-7-303]~~ 75-7-811.

4. Page 29, Lines 875 through 877:

875 (h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's  
876 qualification is determined:

877 (i) is a current distributee or permissible distributee of trust income or  
principal; or

5. Page 30, Line 922 through Page 31, Line 942:

922 (2) Except as specifically provided in this chapter, the ~~[[The]]~~ terms of a  
trust prevail over any provision of this chapter except:

\* \* \* *Some lines not shown* \* \* \*

929 (e) the effect of a spendthrift provision .Section 26-6-14, and the rights of  
certain creditors and assignees

930 to reach a trust as provided in Part 5, Creditor's Claims-Spendthrift and Discretionary

Trusts:

931       (f) the power of the court under Section 75-7-702 to require, dispense with, or  
modify  
932 or terminate a bond;  
933       ~~[(g) the power of the court under Subsection 75-7-708(2) to adjust a trustee's~~  
934 ~~compensation specified in the terms of the trust which is unreasonably low or~~  
~~high; ]]~~  
935       ~~[(h)]~~ (g) the effect of an exculpatory term under Section 75-7-1008;  
936       ~~[(i)]~~ (h) the rights under Sections 75-7-1010 through 75-7-1013 of a  
person other than a  
937 trustee or beneficiary;  
938       ~~[(j)]~~ (i) periods of limitation for commencing a judicial proceeding;  
939       ~~[(k) the power of the court to take such action and exercise such jurisdiction~~  
~~as may be~~  
940 ~~necessary in the interests of justice; ]]~~ and  
941       ~~[(l)]~~ (i) the subject-matter jurisdiction of the court and venue for  
commencing a proceeding  
942 as provided in Sections 75-7-203 and 75-7-205.

6. *Page 34, Lines 1020 through 1030:* Delete lines 1020 through 1030 and renumber the remaining Sections accordingly.

7. *Page 43, Lines 1317 through 1318:*

1317       To the extent a beneficiary's interest is not protected by a spendthrift provision ~~or~~  
~~Section 26-6-14~~, the  
1318 court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's  
interest

8. *Page 59, Lines 1800 through 1808:*

1800       **75-7-708. Compensation of trustee.**  
1801       ~~[(1)]~~ If the terms of a trust do not specify the trustee's compensation, a trustee  
is entitled  
1802 to compensation that is reasonable under the circumstances.  
1803       ~~[(2) If the terms of a trust specify the trustee's compensation, the trustee is~~  
~~entitled to be~~  
1804 ~~compensated as specified, but the court may allow more or less compensation if:~~  
1805 ~~— (a) the duties of the trustee are substantially different from those contemplated~~

when  
1806 the trust was created; or  
1807 — (b) the compensation specified by the terms of the trust would be unreasonably  
low or  
1808 high. ]]

9. Page 61, Lines 1860 through 1864:

1860 investment complies with the prudent investor rule of Section 75-7-901. The trustee may  
be  
1861 compensated by the investment company or investment trust for providing those services  
out of  
1862 fees charged to the trust [ [ - if the trustee at least annually notifies the persons entitled  
under  
1863 Section 75-7-811 to receive a copy of the trustee's annual report, disclosing the  
existence of the  
1864 compensation, the reasons for the compensation, and how the amount was  
calculated. ]] .

10. Page 61, Lines 1870 through 1879:

1870 (8) This section does not preclude the following transactions **by the trustee** [ [ -  
if fair to the  
1871 beneficiaries. ]] :

\* \* \* *Some lines not shown* \* \* \*

1879 (e) an advance by the trustee of money for the protection of the trust ;  
(f) collect, hold, and retain trust assets received from a trustor until, in the  
judgment of the trustee, disposition of the assets should be made. The assets may be  
retained even though they include an asset in which the trustee is personally  
interested;  
(g) acquire an undivided interest in a trust asset in which the trustee, in any  
trust capacity, holds an undivided interest;  
(h) borrow money to be repaid from trust assets or otherwise;  
(i) advance money to be repaid from trust assets or otherwise; or  
(j) employ persons, including attorneys, auditors, investment advisers, or  
agents, even if they are associated with the trustee, to advise or assist the trustee in  
the performance of his administrative duties; or

(ii) act without independent investigation upon their recommendations; and  
(iii) instead of acting personally, employ one or more agents to perform any act  
of administration, whether or not discretionary;

(k) if a governing instrument or order requires or authorizes investment in  
United States government obligations, a trustee may invest in those obligations,  
either directly or in the form of securities or other interests, in any open-end or  
closed-end management type investment company or investment trust registered  
under the provisions of the Investment Company Act of 1940, 15 U.S.C. Sections  
80a-1 through 80a-64 if:

(i) the portfolio of the investment company or investment trust is limited to  
United States government obligations, and repurchase agreements are fully  
collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral  
for any repurchase agreement either directly or through an authorized custodian .

11. Page 63, Lines 1942 through 1944:

1942 (3) A trustee shall send to the [[~~distributees or permissible distributees of trust~~  
income or  
1943 principal, and, except to the extent the terms of the trust provide otherwise, to  
other]] qualified  
1944 beneficiaries who request it, at least annually and at the termination of the trust, a report  
of the

12. Page 64, Line 1952:

1952 (4) A qualified beneficiary may waive the right to a trustee's report or other  
information

13. Page 65, Line 1995 through Page 68, Line 2089:

1995 **75-7-814. Specific powers of trustee.**  
1996 Without limiting the authority conferred by Section 75-7-813, a trustee may:  
\* \* \* Some lines not shown \* \* \*  
2086 (25) sign and deliver contracts and other instruments that are useful to achieve or  
2087 facilitate the exercise of the trustee's powers; [[~~and~~]]  
2088 (26) on termination of the trust, exercise the powers appropriate to finalize the  
2089 administration of the trust and distribute the trust property to the persons entitled to it ;



and

(27) (a) delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(i) selecting the agent;

(ii) establishing the scope and terms of the delegation consistent with the purposes of the trust; and

(iii) periodically reviewing the agent's actions to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent has a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of this Subsection (27)(a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated. .

14. Page 70, Lines 2137 through 2139:

2137       (1) Except as otherwise provided in Subsection (2), a trustee who invests and  
manages  
2138 trust assets owes a duty to the beneficiaries of the trust to comply with the prudent  
investor rule  
2139 set forth in this chapter. If a trustee is named on the basis of a trustee's  
representations of special skills or expertise, the trustee has a duty to use those  
special skills or expertise.

15. Page 74, Lines 2281 through 2284:

2281       **75-7-1004. Attorney's fees and costs.**  
2282       (1) In a judicial proceeding involving the administration of a trust, the court may,  
as justice  
2283 and equity may require, award costs and expenses, including reasonable attorney's fees, to  
any  
2284 party, to be paid by another party or from the trust that is the subject of the controversy.  
(2) If a trustee defends or prosecutes any proceeding in good faith, whether  
successful or not, the trustee is entitled to receive from the trust the necessary  
expenses and disbursements, including reasonable attorney's fees incurred.

16. Page 75, Line 2314 through Page 76, Line 2323:

2314 ~~[(1)]~~ A term of a trust relieving a trustee of liability for breach of trust is  
unenforceable  
2315 to the extent that it:  
2316 ~~[(a)]~~ (1) relieves the trustee of liability for breach of trust committed in  
bad faith or with  
2317 reckless indifference to the purposes of the trust or the interests of the beneficiaries; or  
2318 ~~[(b)]~~ (2) was inserted **by the trustee or fiduciary without disclosure**  
**of its existence and contents** ~~[[as the result of an abuse by the trustee of a~~  
~~fiduciary or confidential~~  
2319 ~~relationship to the settlor]]~~ .  
2320 ~~[(2) An exculpatory term drafted or caused to be drafted by the trustee is~~  
~~invalid as an~~  
2321 ~~abuse of a fiduciary or confidential relationship unless the settlor is or was~~  
~~represented by~~  
2322 ~~independent counsel or the trustee proves that the exculpatory term is fair under the~~  
2323 ~~circumstances and that its existence and contents were adequately communicated to~~  
~~the settlor.]]~~

17. Page 76, Lines 2328 through 2333:

2328 the breach, or ratified the transaction constituting the breach, unless ~~[[;~~  
2329 ~~(1) the consent, release, or ratification of the beneficiary was induced by~~  
~~improper~~  
2330 ~~conduct of the trustee;~~  
2331 ~~(2)]~~ at the time of the consent, release, or ratification, the beneficiary did not  
know of  
2332 the beneficiary's rights or of the material facts relating to the breach ~~[[; or~~  
2333 ~~(3) the beneficiary was not represented by independent counsel]]~~ .

1. Page 79, Line 2442 through Page 80, Line 2457:

2442 **75-7-1103. Application to existing relationships.**  
2443 (1) Except as otherwise provided, this chapter applies to:  
2444 (a) all trusts created before, on, or after ~~[[May]]~~ **July** 1, 2004;  
2445 (b) all judicial proceedings concerning trusts commenced on or after  
[[May]] **July** 1, 2004; and  
2446 (c) judicial proceedings concerning trusts commenced before ~~[[May]]~~ **July**

- 1, 2004 unless the
- 2447 court finds that application of a particular provision of this chapter would substantially  
interfere
- 2448 with the effective conduct of the judicial proceedings or prejudice the rights of the  
parties, in
- 2449 which case the particular provision of this chapter does not apply and the superseded  
section
- 2450 will apply.
- 2451 (2) Any rule of construction or presumption provided in this chapter applies to trust  
2452 instruments executed before ~~[[ May ]]~~ July 1, 2004 unless there is a clear  
indication of a contrary intent
- 2453 in the terms of the trust.
- 2454 (3) An act done before ~~[[ May ]]~~ July 1, 2004 is not affected by this chapter.
- 2455 (4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed  
2456 period that has commenced to run under any other statute before ~~[[ May ]]~~ July 1,  
2004, that statute
- 2457 continues to apply to the right even if it has been repealed or superseded.

The motion to amend passed unanimously.

Sen. Hillyard explained the bill, assisted by Tom Christensen, chairman of the committee to study the Uniform Trust Act, and George Sutton, Association of Financial Services.

MOTION: Rep. D. Clark moved to pass the bill out favorably as amended. The motion passed unanimously, with Rep. Biskupski absent for the vote.

MOTION: Rep. Webb moved to adjourn the meeting. The motion passed unanimously, with Rep. Biskupski absent for the vote.

Rep. Bryson adjourned the meeting at 8:45 a.m.