

SENATE BILL NO. 138—SENATORS HUTCHISON, JONES,  
HAMMOND, FORD; AND SETTELMAYER

FEBRUARY 18, 2013

JOINT SPONSORS: ASSEMBLYMEN FIORE; PAUL  
ANDERSON, DUNCAN AND STEWART

Referred to Committee on Judiciary

SUMMARY—Authorizes irrevocable trusts and certain other entities to hold ownership interests in professional entities. (BDR 7-848)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to business entities; authorizing an owner of a professional entity or a member of a professional association to transfer his or her interest in the professional entity or professional association to an irrevocable trust or other legal entity; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law authorizes an owner of an interest in a professional entity or a  
2 member of a professional association to transfer his or her owner’s interest or any  
3 other interest in the assets of the professional entity or professional association to a  
4 revocable trust if: (1) the owner or member acts as trustee of the revocable trust;  
5 and (2) any cotrustee who is not licensed to perform the professional services for  
6 which the professional entity was formed does not participate in any decisions  
7 concerning the rendering of those services. (NRS 89.070, 89.240)

8 This bill authorizes an owner of an interest in a professional entity or a member  
9 of a professional association to transfer his or her owner’s interest to any type of  
10 trust or legal entity. Under this bill, if the interest is transferred to a trust: (1) the  
11 owner or member or a person licensed to perform the professional services for  
12 which the professional entity was formed must act as trustee of the trust; and (2)  
13 any cotrustee who is not licensed to perform the professional services for which the  
14 professional entity or professional association was formed must not participate in  
15 any decisions concerning the rendering of those services. If the interest is  
16 transferred to another legal entity: (1) the owner or member who transferred the



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17 interest or another natural person licensed to perform the professional services for  
18 which the professional entity was formed must be designated to perform those  
19 services; and (2) any person who owns stock or a membership interest in the legal  
20 entity and is not licensed to perform the professional services for which the  
21 professional entity was formed must not participate in any decisions concerning the  
22 rendering of those services.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     **Section 1.** NRS 89.040 is hereby amended to read as follows:  
2     89.040 1. One or more persons may organize a professional  
3     entity in the manner provided for organizing a corporation pursuant  
4     to chapter 78 of NRS or a limited-liability company pursuant to  
5     chapter 86 of NRS. Each person organizing the professional entity  
6     must, except as otherwise provided in subsection 2 of NRS 89.050,  
7     be authorized to perform the professional service for which the  
8     professional entity is organized. The articles must contain the  
9     following additional information:  
10    (a) The profession to be practiced by means of the professional  
11    entity.  
12    (b) The names and addresses, either residence or business, of the  
13    original stockholders and directors of the professional corporation or  
14    the original members and managers of the professional limited-  
15    liability company.  
16    (c) Except as otherwise provided in paragraphs (d) and (e), a  
17    certificate from the regulating board of the profession to be  
18    practiced showing that each of the directors, stockholders, managers  
19    or members who is a natural person is licensed to practice the  
20    profession.  
21    (d) For a professional entity organized pursuant to this chapter  
22    and practicing pursuant to the provisions of NRS 623.349, a  
23    certificate from the regulating board or boards of the profession or  
24    professions to be practiced showing that control and two-thirds  
25    ownership of the professional entity is held by persons registered or  
26    licensed pursuant to the applicable provisions of chapter 623, 623A  
27    or 625 of NRS. As used in this paragraph, "control" has the meaning  
28    ascribed to it in NRS 623.349.  
29    (e) For a professional entity formed pursuant to subsection ~~1~~ 6  
30    of NRS 89.070, a certificate from the State Bar of Nevada showing  
31    at least one stockholder or member who is a natural person is  
32    admitted by the Supreme Court of the State of Nevada to practice  
33    law as a member of the State Bar of Nevada.  
34    2. The corporate name of a professional corporation must  
35    contain the words "Professional Corporation" or the abbreviation



1 “Prof. Corp.,” “P.C.” or “PC,” or the word “Chartered” or the  
2 abbreviation “Chtd.,” or “Limited” or the abbreviation “Ltd.” The  
3 corporate name must contain the last name of one or more of its  
4 current or former stockholders.

5 3. The name of a professional limited-liability company must  
6 contain the words “Professional Limited-Liability Company” or the  
7 abbreviations “Prof. L.L.C.,” “Prof. LLC,” “P.L.L.C.,” “PLLC,” or  
8 the word “Chartered” or the abbreviation “Chtd.,” or “Limited” or  
9 the abbreviation “Ltd.” The name of a professional limited-liability  
10 company must contain the last name of one or more of its current or  
11 former members.

12 4. The professional entity may render professional services and  
13 exercise its authorized powers under a fictitious name if the  
14 professional entity has first registered the name in the manner  
15 required by chapter 602 of NRS.

16 **Sec. 2.** NRS 89.070 is hereby amended to read as follows:

17 89.070 1. Except as otherwise provided in this section and  
18 NRS 623.349:

19 (a) No professional entity may issue any of its owner’s interest  
20 to anyone other than a natural person who is licensed to render the  
21 same specific professional services as those for which the  
22 professional entity was formed.

23 (b) No owner may enter into a voting trust agreement or any  
24 other type of agreement vesting another person with the authority to  
25 exercise the voting power of any or all of his or her owner’s interest,  
26 unless the other person is licensed to render the same specific  
27 professional services as those for which the professional entity was  
28 formed.

29 (c) No owner’s interest may be sold or transferred except to a  
30 natural person who is eligible to be an owner or to the personal  
31 representative or estate of a deceased or legally incompetent  
32 stockholder. The personal representative or estate of the owner may  
33 continue to own the owner’s interest for a reasonable period, but  
34 may not participate in any decisions concerning the rendering of  
35 professional services.

36 ➤ The articles, bylaws or operating agreement of the professional  
37 entity may provide specifically for additional restrictions on the  
38 transfer of an owner’s interest and may provide for the redemption  
39 or purchase of the owner’s interest by the professional entity, its  
40 owners or an eligible individual account plan complying with the  
41 requirements of subsection ~~4~~ 3 at prices and in a manner  
42 specifically set forth.

43 2. An owner may transfer his or her owner’s interest in the  
44 professional entity or any other interest in the assets of the



1 professional entity to a ~~revocable~~ trust *or other legal entity* if ~~the~~  
2 :

3 *(a) In the case of a transfer of the interest to a trust:*

4 *(1) The owner or another natural person licensed to*  
5 *perform the services for which the professional entity was formed*  
6 *acts as trustee of the ~~revocable~~ trust ; and ~~any~~*

7 *(2) Any person who acts as cotrustee and is not licensed to*  
8 *perform the services for which the professional entity was formed*  
9 *does not participate in any decisions concerning the rendering of*  
10 *those services.*

11 *(b) In the case of a transfer of the interest to another legal*  
12 *entity:*

13 *(1) The owner or another natural person licensed to*  
14 *perform the services for which the professional entity was formed*  
15 *is designated by the legal entity to which the interest is transferred*  
16 *to perform those services; and*

17 *(2) Any person who owns stock or a membership interest in*  
18 *the legal entity to which the interest is transferred and is not*  
19 *licensed to perform the services for which the professional entity*  
20 *was formed does not participate in any decisions concerning the*  
21 *rendering of those services.*

22 ~~12~~ 3. Except as otherwise provided in NRS 623.349, a person  
23 not licensed to render the professional services for which the  
24 professional entity was formed may own a beneficial interest in any  
25 of the assets, including an owner's interest, held for the person's  
26 account by an eligible individual account plan sponsored by the  
27 professional entity for the benefit of its employees, which is  
28 intended to qualify under section 401 of the Internal Revenue Code,  
29 26 U.S.C. § 401, if the terms of the trust are such that the total  
30 number of shares which may be distributed for the benefit of  
31 persons not licensed to render the professional services for which  
32 the professional entity was formed is less than a controlling interest  
33 and:

34 (a) The trustee of the trust is licensed to render the same specific  
35 professional services as those for which the professional entity was  
36 formed; or

37 (b) The trustee is not permitted to participate in any decisions  
38 concerning the rendering of professional services in his or her  
39 capacity as trustee.

40 ➤ A trustee who is individually an owner may participate in his or  
41 her individual capacity as an owner, manager, director or officer in  
42 any decision.

43 ~~13~~ 4. Except as otherwise provided in subsection ~~4~~ 5, a  
44 professional entity in which all the owners who are natural persons  
45 are licensed to render the same specific professional service may



1 acquire and hold an owner's interest in another professional entity  
2 or in a similar entity organized pursuant to the corresponding law of  
3 another state, only if all the owners who are natural persons of the  
4 professional entity whose stock is acquired are licensed in  
5 that professional entity's state of formation to render the same  
6 specific professional service as the owners who are natural persons  
7 of the professional entity that acquires the owner's interest.

8 ~~4~~ 5. A professional entity practicing pursuant to NRS  
9 623.349 in which all the owners are natural persons, regardless of  
10 whether or not the natural persons are licensed to render the same  
11 specific professional service, may acquire and hold an owner's  
12 interest in another professional entity or in a similar entity organized  
13 pursuant to the corresponding law of another state if control and  
14 two-thirds ownership of the business organization or association that  
15 is acquired is held by persons registered or licensed pursuant to the  
16 applicable provisions of chapter 623, 623A or 625 of NRS. As used  
17 in this subsection, "control" has the meaning ascribed to it in  
18 NRS 623.349.

19 ~~5~~ 6. An attorney may form a legal services professional  
20 entity that is organized or incorporated in the State of Nevada with  
21 one or more natural persons, each of whom is a member in good  
22 standing and eligible to practice before the bar of any jurisdiction of  
23 the United States, and such legal services entity may issue an  
24 owner's interest to a natural person who is a member in good  
25 standing and eligible to practice before the bar of any jurisdiction of  
26 the United States provided that at least one attorney admitted by the  
27 Supreme Court of the State of Nevada to practice law as a member  
28 of the State Bar of Nevada owns an owner's interest in the  
29 professional entity.

30 ~~6~~ 7. Any act in violation of this section is void and does not  
31 pass any rights or privileges or vest any powers, except to an  
32 innocent person who is not an owner and who has relied on the  
33 effectiveness of the action.

34 **Sec. 3.** NRS 89.080 is hereby amended to read as follows:

35 89.080 1. If any officer, stockholder, director, member,  
36 manager or employee of a professional entity organized under this  
37 chapter who has been rendering professional service to the public  
38 becomes legally disqualified to render such professional services  
39 within this State, he or she shall sever within a reasonable period all  
40 professional service with and financial interest in the professional  
41 entity, but this chapter does not prevent a professional entity formed  
42 under this chapter from entering into a contract with an employee  
43 which provides for severance pay or for compensation for past  
44 services upon termination of professional service, whether by death  
45 or otherwise.



1 2. Except as otherwise provided in NRS 623.349, a natural  
2 person may not be an officer, director or manager of a professional  
3 entity formed under this chapter unless the natural person is licensed  
4 to render the same specific professional services as those for which  
5 the professional entity was formed.

6 3. Upon the death of an owner of a professional entity who has  
7 transferred his or her interest in the professional entity to a  
8 ~~irrevocable~~ trust *or other legal entity* as permitted by NRS 89.070,  
9 the trustee of the ~~irrevocable~~ trust *or the other legal entity to which*  
10 *the owner transferred his or her interest* may continue to retain any  
11 interest so transferred for a reasonable period, but may not exercise  
12 any authority concerning the rendering of professional services and  
13 may not, except as otherwise provided in NRS 623.349, distribute  
14 the owner's interest to any person not licensed to render the services  
15 for which the professional entity was formed.

16 4. A professional entity's failure to require compliance with the  
17 provisions of this section is a ground for the forfeiture of its charter.

18 **Sec. 4.** NRS 89.240 is hereby amended to read as follows:

19 89.240 1. If any member or employee of a professional  
20 association who has been rendering professional service to the  
21 public becomes legally disqualified to render the professional  
22 service within this State, the member or employee shall sever within  
23 a reasonable period all professional service with and financial  
24 interest in the association; but this chapter does not prevent a  
25 professional association from entering into a contract with a member  
26 or employee which provides for severance pay or for compensation  
27 for past services upon termination of professional service, whether  
28 by death or otherwise. Upon the death of a member of the  
29 association who has transferred his or her interest in the association  
30 to a ~~irrevocable~~ trust *or other legal entity* as permitted by subsection  
31 2, the trustee of the ~~irrevocable~~ trust *or the other legal entity to*  
32 *which the member transferred his or her interest* may continue to  
33 retain any interest so transferred for a reasonable period, but may  
34 not exercise any authority concerning the rendering of professional  
35 services and may not, except as otherwise provided in NRS 623.349,  
36 distribute the interest in the association or its assets to any person  
37 not licensed to render the services for which the association was  
38 organized.

39 2. Except as otherwise authorized by NRS 623.349, a  
40 membership interest in a professional association may not be sold or  
41 transferred except to a natural person who is eligible to be a member  
42 of the association or to the personal representative or estate of a  
43 deceased or legally incompetent member, except as provided in this  
44 subsection. The personal representative of such a member may  
45 continue to own such interest for a reasonable period, but may not



1 participate in any decisions concerning the rendering of professional  
2 service. A member may transfer his or her interest in the association  
3 or any other interest in the assets of the association to a ~~revocable~~  
4 trust *or other legal entity* if ~~the~~ :

5 *(a) In the case of a transfer of the interest to a trust:*

6 *(1) The member or another natural person licensed to*  
7 *perform the services for which the association was formed* acts as  
8 trustee of the ~~revocable~~ trust ; and ~~any~~

9 *(2) Any* person who acts as cotrustee and is not licensed to  
10 perform the services for which the association is organized does not  
11 participate in any decisions concerning the rendering of those  
12 professional services.

13 *(b) In the case of a transfer of the interest to another legal*  
14 *entity:*

15 *(1) The member or another natural person licensed to*  
16 *perform the services for which the association was formed is*  
17 *designated by the legal entity to which the interest is transferred to*  
18 *perform those services; and*

19 *(2) Any person who owns stock or a membership interest in*  
20 *the legal entity to which the interest is transferred and is not*  
21 *licensed to perform the services for which the association was*  
22 *formed does not participate in any decisions concerning the*  
23 *rendering of those services.*

24 3. The articles of association may provide specifically for  
25 additional restrictions on the transfer of members' interests and may  
26 provide for the redemption or purchase of such an interest by the  
27 association or its other members at prices and in a manner  
28 specifically set forth in the articles.



