

Assembly Bill No. 159—Assemblymen Gibbons, Chowning, Hettrick, Ohrenschall, Dini, Bache, Gustavson, Freeman, Tiffany, de Braga, Mortenson, Cegavske, McClain, Claborn, Beers, Anderson, Goldwater, Lee, Neighbors, Segerblom, Carpenter, Nolan, Leslie and Thomas

CHAPTER.....

AN ACT relating to decedents; providing that a person who is a culpable actor in the felonious and intentional killing of a decedent may not inherit from the decedent or accrue other benefits based upon the death of the decedent; providing for a civil action; and providing other matters properly relating thereto.

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

Section 1. Title 3 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 28, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 17, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Acquitted” includes, without limitation, a finding of not guilty by reason of insanity or diminished capacity.*

Sec. 4. *“Agent” means a person who is authorized to represent or act for another person. The term includes, without limitation, an attorney in fact under a durable or nondurable power of attorney or a person who is authorized pursuant to the provisions of a governing instrument to make decisions concerning the provision of health care to another person.*

Sec. 5. *“Beneficiary” means a person who is entitled to accrue, acquire or receive any property, interest or benefit pursuant to the provisions of a governing instrument or the laws of intestate succession.*

Sec. 6. *“Community property” has the meaning ascribed to it in NRS 123.220.*

Sec. 7. *“Community property with right of survivorship” means community property in which a right of survivorship exists pursuant to NRS 111.064 or 115.060 or any other provision of law.*

Sec. 8. *“Convicted” and “conviction” mean a judgment based upon:*

- 1. A plea of guilty, guilty but mentally ill or nolo contendere;*
- 2. A finding of guilt by a jury or a court sitting without a jury;*
- 3. An adjudication of delinquency or finding of guilt by a court having jurisdiction over juveniles; or*

- 4. Any other admission or finding of guilt in a criminal action or a proceeding in a court having jurisdiction over juveniles.*

Sec. 9. *“Culpable actor in the felonious and intentional killing of a decedent” means a person who:*

1. Causes or perpetrates the felonious and intentional killing of the decedent;

2. Aids, abets, commands, counsels, encourages, hires, induces, procures or solicits another person to cause or perpetrate the felonious and intentional killing of the decedent; or

3. Is a principal in any degree, accessory before the fact, accomplice or conspirator to the felonious and intentional killing of the decedent.

Sec. 10. "Governing instrument" means any of the following:

1. A deed or any other instrument that transfers any property, interest or benefit.

2. An annuity or a policy of insurance.

3. A trust, whether created by an instrument executed during the life of the settlor, a testamentary instrument or any other instrument, judgment or decree, including, without limitation, any of the following:

(a) An express trust, whether private or charitable, and any additions to such a trust.

(b) A trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust.

4. A will, a codicil or any other testamentary instrument, including, without limitation, a testamentary instrument that:

(a) Appoints a person to serve in a fiduciary or representative capacity, nominates a guardian or revokes or revises another will, codicil or testamentary instrument; or

(b) Excludes or limits the right of a person or class of persons to succeed to any property, interest or benefit pursuant to the laws of intestate succession.

5. Any account or deposit that is payable or transferable on the death of a person or any instrument that provides for the payment or transfer of any property, interest or benefit on the death of a person.

6. A security registered as transferable on the death of a person or a security registered in beneficiary form pursuant to NRS 111.480 to 111.650, inclusive.

7. Any instrument creating or exercising a power of appointment or a durable or nondurable power of attorney.

8. Any instrument that appoints or nominates a person to serve in any fiduciary or representative capacity, including, without limitation, an agent, guardian, executor, personal representative or trustee.

9. Any public or private plan or system that entitles a person to the payment or transfer of any property, interest or benefit, including, without limitation, a plan or system that involves any of the following:

(a) Pension benefits, retirement benefits or other similar benefits.

(b) Profit-sharing or any other form of participation in profits, revenues, securities, capital or assets.

(c) Industrial insurance, workers' compensation or other similar benefits.

(d) Group insurance

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10. A partnership agreement or an agreement concerning any joint adventure, enterprise or venture.

11. A premarital, antenuptial or postnuptial agreement, a marriage contract or settlement or any other similar agreement, contract or settlement.

12. Any instrument that declares a homestead pursuant to chapter 115 of NRS.

13. Any other dispositive, appointive, nominative or declarative instrument.

Sec. 11. "Interest" means:

1. Any interest, in whole or in part, in any property or estate, whether such interest is legal or equitable, present or future, or contingent or vested;

2. A right, power or privilege to appoint, consume, exercise, transfer or use any such interest; or

3. Any other right, power or privilege relating to any such interest.

Sec. 12. "Interested person" means:

1. A parent, spouse, child or sibling of a decedent;

2. A beneficiary or a person who would be a beneficiary if another person were found to be a killer of a decedent;

3. A person who serves in any fiduciary or representative capacity with respect to any property, interest or benefit that is in any way related to a decedent, his estate or a governing instrument or a person who would be entitled to serve in such a capacity if another person were found to be a killer of a decedent; or

4. A person who has a right to or claim against any property, interest or benefit that is in any way related to a decedent, his estate or a governing instrument or a person who would have such a right or claim if another person were found to be a killer of a decedent.

Sec. 13. "Joint tenants with right of survivorship" means two or more persons who hold any property, interest or benefit under circumstances that entitle one or more of the persons to the whole of the property, interest or benefit on the death of one or more of the other persons.

Sec. 14. "Killer" means a person who is deemed to be a killer of a decedent pursuant to section 20 or 21 of this act.

Sec. 15. "Payor" means a person who is authorized or obligated by law or a governing instrument to pay or transfer any property, interest or benefit to another person.

Sec. 16. "Person" means any of the following:

1. A natural person.

2. Any form of business or social organization and any other nongovernmental legal entity, including, without limitation, a corporation, partnership, association, trust or unincorporated organization.

3. A government, a political subdivision of a government or an agency or instrumentality of a government or a political subdivision of a government.

Sec. 17. “Property” means anything that may be the subject of ownership, including, without limitation, any real or personal property or any estate in such property.

Sec. 18. For the purposes of this chapter:

1. A killing is “felonious” if it is committed without legal excuse or justification.

2. A killing is “intentional” if it is caused by or occurs during the commission of any act which involves a degree of culpability that is greater than criminal negligence.

3. Insanity or diminished capacity shall be deemed not to be a legal excuse or justification and must not be considered in determining whether a killing is felonious or intentional.

Sec. 19. 1. Notwithstanding any other provision of law, the provisions of this chapter apply to any appointment, nomination, power, right, property, interest or benefit that accrues or devolves to a killer of a decedent based upon the death of the decedent. If any such appointment, nomination, power, right, property, interest or benefit is not expressly covered by the provisions of this chapter, it must be treated in accordance with the principle that a killer cannot profit or benefit from his wrong.

2. The provisions of this chapter do not abrogate or limit the application of:

(a) The anti-lapse provisions of NRS 133.200 or the right of representation, as defined and applied in chapter 134 of NRS, with respect to a person who is not a killer of the decedent; or

(b) Any provision of a governing instrument that designates:

(1) A contingent or residuary beneficiary who is not a killer of the decedent; or

(2) Any other beneficiary who is not a killer of the decedent.

3. The provisions of this chapter do not abrogate or limit any principle or rule of the common law, unless the principle or rule is inconsistent with the provisions of this chapter.

Sec. 20. 1. If a court in this state or any other jurisdiction enters a judgment of conviction against a person in which the person is found to have been a culpable actor in the felonious and intentional killing of a decedent:

(a) The conviction conclusively establishes for the purposes of this chapter that the person feloniously and intentionally killed the decedent; and

(b) The person shall be deemed to be a killer of the decedent.

2. Notwithstanding the provisions of NRS 48.125 or 51.295 or any other provision of law, a judgment of conviction described in subsection

1, including, without limitation, a judgment of conviction based upon a plea of nolo contendere, is admissible in any civil action brought pursuant to the provisions of this chapter.

3. For the purposes of this section:

(a) A court in "any other jurisdiction" includes, without limitation, a tribal court or a court of the United States or the Armed Forces of the United States.

(b) A court "enters" a judgment of conviction against a person on the date on which guilt is admitted, adjudicated or found, whether or not:

(1) The court has imposed a sentence, a penalty or other sanction for the conviction; or

(2) The person has exercised any right to appeal the conviction.

(c) A killing in this state that constitutes murder of the first or second degree, as defined in NRS 200.010, 200.020 and 200.030, or voluntary manslaughter, as defined in NRS 200.040, 200.050 and 200.060, shall be deemed to be a felonious and intentional killing.

Sec. 21. 1. For the purposes of this chapter, an interested person may bring a civil action alleging that a person was a culpable actor in the felonious and intentional killing of a decedent. An interested person may bring such a civil action whether or not any person who is alleged to be a killer in the civil action or any other person is or has been, in a separate criminal action, charged with or convicted or acquitted of being:

(a) A culpable actor in the felonious and intentional killing of the decedent; or

(b) A culpable actor in any other offense arising out of the facts surrounding the killing of the decedent.

2. If an interested person brings a civil action pursuant to this section, the court shall determine, by a preponderance of the evidence, whether a person who is alleged to be a killer of the decedent was a culpable actor in the felonious and intentional killing of the decedent. If the court finds by a preponderance of the evidence that a person who is alleged to be a killer of the decedent was a culpable actor in the felonious and intentional killing of the decedent:

(a) The finding of the court conclusively establishes for the purposes of this chapter that the person feloniously and intentionally killed the decedent; and

(b) The person shall be deemed to be a killer of the decedent.

3. If, in a separate criminal action, a person is charged with being a culpable actor in the felonious and intentional killing of a decedent or with any other offense arising out of the facts surrounding the killing of the decedent and:

(a) The person is acquitted of the charge;

(b) The charge is dismissed; or

(c) A verdict or judgment is not reached or entered on the charge for any reason, evidence concerning any such matter is not admissible in a civil action brought pursuant to this section.

4. Upon its own motion or the motion of an interested person, the court may, in whole or in part, stay the proceedings in a civil action brought pursuant to this section during the pendency of any separate criminal action that has been brought against a person who is alleged to be a killer in the civil action. The provisions of this subsection do not limit the power of the court to stay the proceedings in the civil action for any other reason.

5. A civil action described in this section may not be commenced by an interested person more than 5 years after the interested person discovers or through the use of reasonable diligence should have discovered the material facts that constitute the cause of action.

Sec. 22. 1. A killer of a decedent forfeits any appointment, nomination, power, right, property, interest or benefit that, pursuant to the provisions of Title 12 of NRS or the common law, accrues or devolves to the killer from or through the estate of the decedent, including, without limitation:

- (a) An intestate share.
- (b) An elective share.
- (c) The share of an omitted spouse or child.
- (d) A family allowance.
- (e) A homestead allowance.
- (f) Any exempt property.

2. The intestate estate of the decedent passes as if the killer had predeceased the decedent, and any other appointment, nomination, power, right, property, interest or benefit described in subsection 1 must be treated as if the killer had predeceased the decedent.

Sec. 23. 1. Except as otherwise provided in section 24 of this act, a killer of a decedent forfeits any appointment, nomination, power, right, property, interest or benefit that, pursuant to the provisions of a governing instrument executed by the decedent or any other person, accrues or devolves to the killer based upon the death of the decedent.

2. In addition to any forfeiture required by subsection 1, if a governing instrument provides for the payment of certain benefits only upon the death of a decedent, a killer of the decedent forfeits any right or interest that the killer is entitled to assert against those benefits on the basis that community property was used, in whole or in part, to purchase the governing instrument or to pay one or more contributions or premiums that were related to the governing instrument.

3. If a killer of a decedent forfeits any appointment, nomination, power, right, property, interest or benefit pursuant to this section, the provisions of each governing instrument affected by the forfeiture must be treated as if the killer had predeceased the decedent.

Sec. 24. 1. *A killer of a decedent forfeits any right of survivorship in property that, at the time of the killing, was held by the decedent and the killer as community property with right of survivorship or as joint tenants with right of survivorship.*

2. *If a killer forfeits any right of survivorship pursuant to subsection 1:*

(a) The respective interests in the property held by the decedent and the killer:

(1) Shall be deemed to be severed and transformed into tenancies in common; and

(2) Are presumed to be undivided equal interests in the property, unless a personal representative of the decedent establishes that the contributions made by the decedent concerning the property exceeded the contributions made by the killer; and

(b) The interest of the decedent passes as the separate property of the decedent and as if the killer had predeceased the decedent.

Sec. 25. 1. *A killer of a decedent may not:*

(a) Bring an action for wrongful death of the decedent pursuant to NRS 41.085; or

(b) Benefit in any way from such an action brought by a personal representative of the decedent.

2. *Each person who may bring or benefit from an action for wrongful death of the decedent pursuant to NRS 41.085 must be determined as if the killer had predeceased the decedent.*

Sec. 26. *Except as otherwise provided by specific statute, if a payor or other third person, in good faith, pays or transfers any property, interest or benefit to a beneficiary in accordance with the provisions of a governing instrument, the payor or other third person is not liable to another person who alleges that the payment or transfer to the beneficiary violated the provisions of this chapter unless, before the payment or transfer, the payor or other third person had actual knowledge that the beneficiary was prohibited from acquiring or receiving the property, interest or benefit pursuant to the provisions of this chapter.*

Sec. 27. 1. *Except as otherwise provided in subsection 2, if a person, without legal right or authorization, acquires or receives any property, interest or benefit forfeited by a killer pursuant to the provisions of this chapter, the person is required to transfer the property, interest or benefit to the beneficiary who is entitled to it pursuant to the provisions of this chapter, or the person is liable to such beneficiary for the value of the property, interest or benefit.*

2. *The provisions of subsection 1 do not apply to a person who:*

(a) Acquired the property, interest or benefit for value and without notice; or

(b) Received the property, interest or benefit in full or partial satisfaction of a legally enforceable obligation and without notice.

Sec. 28. 1. *If a killer, for value or otherwise, transfers to a third person any property, interest or benefit forfeited by the killer pursuant to the provisions of this chapter, the killer is required to recover and transfer the property, interest or benefit to the beneficiary who is entitled to it pursuant to the provisions of this chapter, or the killer is liable to such beneficiary for the value of the property, interest or benefit.*

2. *If any federal law preempts any provision of this chapter requiring a killer to forfeit any property, interest or benefit and the property, interest or benefit accrues or devolves to the killer because of the preemption, the killer is required to transfer the property, interest or benefit to the beneficiary who, in the absence of the preemption, would have been entitled to it pursuant to the provisions of this chapter, or the killer is liable to such beneficiary for the value of the property, interest or benefit.*

Sec. 29. NRS 41.085 is hereby amended to read as follows:

41.085 1. As used in this section, "heir" means a person who, under the laws of this state, would be entitled to succeed to the separate property of the decedent if he had died intestate. ***The term does not include a person who is deemed to be a killer of the decedent pursuant to sections 2 to 28, inclusive, of this act, and such a person shall be deemed to have predeceased the decedent as set forth in section 25 of this act.***

2. When the death of any person, whether or not a minor, is caused by the wrongful act or neglect of another, the heirs of the decedent and the personal representatives of the decedent may each maintain an action for damages against the person who caused the death, or if the wrongdoer is dead, against his personal representatives, whether the wrongdoer died before or after the death of the person he injured. If any other person is responsible for the wrongful act or neglect, or if the wrongdoer is employed by another person who is responsible for his conduct, the action may be maintained against that other person, or if he is dead against his personal representatives.

3. An action brought by the heirs of a decedent pursuant to subsection 2 and the cause of action of that decedent brought or maintained by his personal representatives which arose out of the same wrongful act or neglect may be joined.

4. The heirs may prove their respective damages in the action brought pursuant to subsection 2, and the court or jury may award each person pecuniary damages for his grief or sorrow, loss of probable support, companionship, society, comfort and consortium, and damages for pain, suffering or disfigurement of the decedent. The proceeds of any judgment for damages awarded under this subsection are not liable for any debt of the decedent.

5. The damages recoverable by the personal representatives of a decedent on behalf of his estate include:

(a) Any special damages, such as medical expenses, which the decedent incurred or sustained before his death, and funeral expenses; and

(b) Any penalties, including, but not limited to, exemplary or punitive damages, that the decedent would have recovered if he had lived, but do not include damages for pain, suffering or disfigurement of the decedent. The proceeds of any judgment for damages awarded under this subsection are liable for the debts of the decedent unless exempted by law.

Sec. 30. NRS 62.216 is hereby amended to read as follows:

62.216 1. A child adjudicated pursuant to this chapter is not a criminal and any adjudication is not a conviction, and a child may be charged with a crime or convicted in any other court only as provided in NRS 62.080 and 62.081.

2. ~~{An}~~ *Except as otherwise provided by specific statute, an* adjudication pursuant to this chapter upon the status of a child does not impose any of the civil disabilities ordinarily resulting from conviction, and the disposition of a child or any evidence given in court must not be used to disqualify the child in any future application for or appointment to the civil service.

Sec. 31. NRS 123.250 is hereby amended to read as follows:

123.250 1. ~~{Upon}~~ *Except as otherwise provided in subsection 2, upon* the death of either husband or wife:

(a) An undivided one-half interest in the community property is the property of the surviving spouse and his or her sole separate property.

(b) The remaining interest ~~{is}~~ :

(1) *Is* subject to the testamentary disposition of the decedent ~~{,} or~~, in the absence ~~{thereof goes, except as otherwise provided in NRS 134.007,}~~ *of such a testamentary disposition, goes* to the surviving spouse ~~{, and is}~~ ; and

(2) *Is* the only portion subject to administration under the provisions of Title 12 of NRS.

2. The provisions of this section ~~{apply}~~ :

(a) *Do not apply to the extent that they are inconsistent with the provisions of sections 2 to 28, inclusive, of this act.*

(b) *Do not apply to community property with right of survivorship.*

(c) *Apply* to all *other* community property, whether the community property was acquired before, on or after July 1, 1975.

3. *As used in this section, "community property with right of survivorship" means community property in which a right of survivorship exists pursuant to NRS 111.064 or 115.060 or any other provision of law.*

Sec. 32. NRS 134.005 is hereby amended to read as follows:

134.005 ~~{1. With the exception of NRS 134.007 and 134.010, the provisions of this chapter, as to the inheritance of the husband and wife from each other, apply only to the separate property of the intestate.~~

~~{2. With the exception of NRS 134.007, the}~~ *The* provisions of this chapter ~~{are inapplicable}~~ *do not apply* to the extent that they are inconsistent with the provisions of a premarital agreement ~~{between the}~~

~~deceased and his~~ *which was executed by the decedent and the* surviving spouse *of the decedent and* which is enforceable pursuant to chapter 123A of NRS.

Sec. 33. NRS 134.010 is hereby amended to read as follows:

134.010 ~~[Upon the death of either the husband or the wife]~~ *If a decedent leaves a surviving spouse:*

1. *Community property with right of survivorship vests in accordance with the right of survivorship;*

2. *All other* community property ~~[shall vest]~~ *vests* as provided in NRS 123.250 ~~[.]~~ *; and*

3. *The provisions of this chapter apply only to the separate property of the decedent.*

Sec. 34. NRS 134.030 is hereby amended to read as follows:

134.030 ~~[Except as provided in NRS 134.007, when any person having]~~ *If a decedent dies intestate and has* title to any estate which is ~~[his or her]~~ *the* separate property ~~[.]~~ *of the decedent and which is* not otherwise limited by contract, ~~[dies intestate as to such estate, it]~~ *the estate* descends and must be distributed, subject to the payment of ~~[his debts,]~~ *the debts of the decedent,* in the manner provided in NRS 134.040 to 134.120, inclusive.

Sec. 35. NRS 111.067, 134.007 and 688A.420 are hereby repealed.

Sec. 36. The amendatory provisions of this act do not apply to a decedent who died before the effective date of this act.

Sec. 37. This act becomes effective upon passage and approval.

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