

ASSEMBLY BILL NO. 78—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

FEBRUARY 17, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning administration of estates. (BDR 12-592)

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 estates; revising certain provisions relating to the powers and duties of a public administrator; revising provisions governing the sale of personal property of an estate; providing that the trustee of a living trust established by a deceased person may obtain the health care records of that person; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a personal representative may contract with certain agents and brokers to sell any personal property of an estate. (NRS 148.105) A personal representative includes an executor, an administrator, a successor personal representative, a special administrator or any other person performing a similar function. (NRS 132.265) The agents or brokers with whom the personal representative contracts are entitled to receive a commission from the proceeds of the sale of personal property fixed by the court in an amount which may not exceed 10 percent of the proceeds of the sale. (NRS 148.105)

This bill increases the limitation on the commission for the sale of personal property other than for the sale of a manufactured home or a motor vehicle to 25 percent of the proceeds of the sale unless, before the sale, the court approves a higher percentage. This bill also provides that the commission for the sale of a manufactured home or a motor vehicle must not exceed 10 percent of the proceeds of the sale. Additionally, this bill provides for the purposes of this statute, the term "commission" includes all fees collected by an agent, broker or group of agents or brokers to secure a purchaser for personal property of an estate, including all fees for costs related to the sale of such personal property.



Existing law requires financial institutions to disclose the balance of a deceased person's account to a public administrator only if he presents a death certificate or an affidavit of death. (NRS 239A.075) Financial institutions are banking corporations, trust companies, savings and loan associations, thrift companies and credit unions that are subject to regulation under the laws of this State. (NRS 239A.030)

This bill expands the manner in which a public administrator may prove death so that any proof of death is sufficient for the administrator to obtain the deceased person's account information. This bill further provides that the financial institution may charge a fee, not to exceed \$2, to provide this information.

Under existing law, a public administrator may administer an estate worth \$5,000 or less without obtaining letters of administration upon filing an affidavit which meets certain requirements with the court. (NRS 253.0403)

This bill increases the value of such an estate which may be administered by a public administrator without letters of administration to \$20,000.

Under existing law, the personal representative of the estate of a deceased patient is authorized to obtain the health care records of that patient. (NRS 629.061) A personal representative includes an executor, administrator, successor personal representative, special administrator or other person who performs substantially the same function under the law. (NRS 132.265)

This bill provides that any trustee of a living trust created by a deceased patient is similarly entitled to obtain health care records of that patient.

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

Section 1. NRS 148.105 is hereby amended to read as follows:

148.105 1. The personal representative may enter into a written contract with any bona fide agent, broker, or multiple group of agents or brokers to secure a purchaser for any personal property of the estate, and by that contract, the personal representative may grant an exclusive right to sell and shall provide for the payment to the agent, broker, or multiple group of agents or brokers, out of the proceeds of a sale to any purchaser secured pursuant to the contract, of a commission, the amount of which must be fixed and allowed by the court upon confirmation of the sale. If the sale is confirmed to the purchaser, the contract is binding and valid as against the estate for the amount so allowed by the court.

2. By the execution of any such contract, no personal liability is incurred by the personal representative, and no liability of any kind is incurred by the estate unless a sale is made and confirmed by the court.

3. ~~{The}~~ *Except as otherwise provided in subsection 4, the commission must not exceed ~~{40}~~ 25 percent of the proceeds from the sale of any personal property pursuant to this section ~~{}~~ unless, before the sale of the personal property, the court approves a commission that exceeds 25 percent of the proceeds from the sale.*



1 **4. If a manufactured home or motor vehicle is sold pursuant**
2 **to the provisions of this section, the commission for the sale of the**
3 **manufactured home or motor vehicle must not exceed 10 percent**
4 **of the proceeds from the sale.**

5 **5. As used in this section:**

6 **(a) "Commission" means all fees collected by an agent, broker**
7 **or group of agents or brokers to secure a purchaser for any**
8 **personal property of an estate pursuant to this section, including**
9 **all fees for costs related to the sale of any personal property**
10 **pursuant to this section.**

11 **(b) "Manufactured home" has the meaning ascribed to it in**
12 **NRS 118B.015.**

13 **Sec. 2.** NRS 239A.075 is hereby amended to read as follows:

14 239A.075 Upon presentation of a death certificate , ~~for~~
15 affidavit of death ~~[H]~~ **or other proof of death**, a financial institution
16 shall provide a public administrator with a statement which sets
17 forth the identifying number and account balance of any accounts on
18 which only the name of the deceased person appears. **A financial**
19 **institution may charge a reasonable fee, not to exceed \$2, to**
20 **provide a public administrator with a statement pursuant to the**
21 **provisions of this section.**

22 **Sec. 3.** NRS 253.0403 is hereby amended to read as follows:

23 253.0403 1. When the gross value of a decedent's property
24 situated in this State does not exceed ~~[\$5,000;]~~ **\$20,000**, a public
25 administrator may, without procuring letters of administration,
26 administer the estate of that person upon filing with the court an
27 affidavit of his right to do so.

28 2. The affidavit must provide:

29 (a) The public administrator's name and address, and his
30 attestation that he is entitled by law to administer the estate;

31 (b) The decedent's place of residence at the time of his death;

32 (c) That the gross value of the decedent's property in this State
33 does not exceed ~~[\$5,000;]~~ **\$20,000;**

34 (d) That at least 40 days have elapsed since the death of the
35 decedent;

36 (e) That no application or petition for the appointment of a
37 personal representative is pending or has been granted in this State;

38 (f) A description of the personal property of the decedent;

39 (g) Whether there are any heirs or next of kin known to the
40 affiant, and if known, the name and address of each such person;

41 (h) If heirs or next of kin are known to the affiant, a description
42 of the method of service he used to provide to each of them notice
43 of the affidavit and that at least 10 days have elapsed since the
44 notice was provided;



1 (i) That all debts of the decedent, including funeral and burial
2 expenses, have been paid or provided for; and

3 (j) The name of each person to whom the affiant intends to
4 distribute the decedent's property.

5 3. Before filing the affidavit with the court, the public
6 administrator shall take reasonable steps to ascertain whether any of
7 the decedent's heirs or next of kin exist. If the administrator
8 determines that heirs or next of kin exist, he shall serve each of them
9 with a copy of the affidavit. Service must be made personally or by
10 certified mail.

11 4. If the affiant:

12 (a) Submits an affidavit which does not meet the requirements
13 of subsection 2 or which contains statements which are not entirely
14 true, any money or property he receives or distributes is subject to
15 all debts of the decedent, based on the priority for payment of debts
16 and charges specified in NRS 147.195.

17 (b) Fails to give notice to heirs or next of kin as required by
18 subsection 3, any money or property he holds or distributes to others
19 shall be deemed to be held in trust for those heirs and next of kin
20 who did not receive notice and have an interest in the property.

21 5. A person who receives an affidavit containing the
22 information required by subsection 2 is entitled to rely upon such
23 information, and if he relies in good faith, he is immune from civil
24 liability for actions based on that reliance.

25 6. Upon receiving proof of the death of the decedent, an
26 affidavit containing the information required by this section and the
27 written approval of the public administrator to do so:

28 (a) A transfer agent of any security shall change the registered
29 ownership of the security claimed from the decedent to the person
30 claiming to succeed to ownership of that security.

31 (b) A governmental agency required to issue certificates of title,
32 ownership or registration to personal property shall issue a new
33 certificate of title, ownership or registration to the person claiming
34 to succeed to ownership of the property.

35 **Sec. 4.** NRS 253.044 is hereby amended to read as follows:

36 253.044 In a county whose population is less than 100,000, the
37 board of county commissioners may, after reviewing each case,
38 direct the public administrator or any other suitable person to:

39 1. Investigate:

40 (a) The financial status of any proposed ward for whom a
41 request to serve as guardian has been received to determine whether
42 there is a need for a guardian to be appointed and whether the public
43 administrator or other suitable person designated by the board is
44 able and eligible to serve in that capacity.



(b) Whether there is any qualified person who is willing and able to serve as guardian for a ward or administrator of the estate of an intestate decedent, and to determine whether there is a need for a guardian or an administrator and whether the public administrator or other suitable person designated by the board is eligible to serve in that capacity.

2. Petition the court for appointment as guardian of the person or as guardian of the person and estate of any ward if, after investigation, the public administrator or other suitable person designated by the board finds that there is a need for such an appointment and that he is able and eligible to serve. If no other qualified person having a prior right is willing and able to serve, the public administrator or other suitable person designated by the board shall petition for appointment as guardian regardless of the amount of assets in the estate of the proposed ward.

3. Petition the court for letters of administration of the estate of a person dying intestate if, after investigation, the public administrator or other suitable person designated by the board finds that there is no other qualified person having a prior right who is willing and able to serve.

4. File an affidavit pursuant to NRS 253.0403 to administer the estate if, after investigation, the public administrator or other suitable person designated by the board finds that the gross value of the decedent's property situated in this State does not exceed ~~[\$5,000.]~~ **\$20,000.**

5. Act, upon order of a court, as:

(a) Guardian of the person and estate of an adult ward; or

(b) Administrator of the estate of a person dying intestate, regardless of the amount of assets in the estate of the ward or decedent if no other qualified person is willing and able to serve.

Sec. 5. NRS 629.061 is hereby amended to read as follows:

629.061 1. Each provider of health care shall make the health care records of a patient available for physical inspection by:

(a) The patient or a representative with written authorization from the patient;

(b) The personal representative of the estate of a deceased patient;

(c) ***Any trustee of a living trust created by a deceased patient;***

(d) The parent or guardian of a deceased patient who died before reaching the age of majority;

~~[(d)]~~ (e) An investigator for the Attorney General or a grand jury investigating an alleged violation of NRS 200.495, 200.5091 to 200.50995, inclusive, or 422.540 to 422.570, inclusive;

~~[(e)]~~ (f) An investigator for the Attorney General investigating an alleged violation of NRS 616D.200, 616D.220, 616D.240 or



1 616D.300 to 616D.440, inclusive, or any fraud in the administration
2 of chapter 616A, 616B, 616C, 616D or 617 of NRS or in the
3 provision of benefits for industrial insurance; or

4 ~~[(f)]~~ (g) Any authorized representative or investigator of a state
5 licensing board during the course of any investigation authorized by
6 law.

7 ➔ The records must be made available at a place within the
8 depository convenient for physical inspection, and inspection must
9 be permitted at all reasonable office hours and for a reasonable
10 length of time. If the records are located outside this State, the
11 provider shall make any records requested pursuant to this section
12 available in this State for inspection within 10 working days after
13 the request.

14 2. Except as otherwise provided in subsection 3, the provider
15 of health care shall also furnish a copy of the records to each person
16 described in subsection 1 who requests it and pays the actual cost of
17 postage, if any, the costs of making the copy, not to exceed 60 cents
18 per page for photocopies and a reasonable cost for copies of X-ray
19 photographs and other health care records produced by similar
20 processes. No administrative fee or additional service fee of any
21 kind may be charged for furnishing such a copy.

22 3. The provider of health care shall also furnish a copy of any
23 records that are necessary to support a claim or appeal under any
24 provision of the Social Security Act, 42 U.S.C. §§ 301 et seq., or
25 under any federal or state financial needs-based benefit program,
26 without charge, to a patient, or a representative with written
27 authorization from the patient, who requests it, if the request is
28 accompanied by documentation of the claim or appeal. A copying
29 fee, not to exceed 60 cents per page for photocopies and a
30 reasonable cost for copies of X-ray photographs and other health
31 care records produced by similar processes, may be charged by the
32 provider of health care for furnishing a second copy of the records
33 to support the same claim or appeal. No administrative fee or
34 additional service fee of any kind may be charged for furnishing
35 such a copy. The provider of health care shall furnish the copy of
36 the records requested pursuant to this subsection within 30 days
37 after the date of receipt of the request, and the provider of health
38 care shall not deny the furnishing of a copy of the records pursuant
39 to this subsection solely because the patient is unable to pay the fees
40 established in this subsection.

41 4. Each person who owns or operates an ambulance in this
42 State shall make his records regarding a sick or injured patient
43 available for physical inspection by:

44 (a) The patient or a representative with written authorization
45 from the patient;



(b) The personal representative of the estate of a deceased patient;

(c) *Any trustee of a living trust created by a deceased patient;*

(d) The parent or guardian of a deceased patient who died before reaching the age of majority; or

~~[(d)]~~ (e) Any authorized representative or investigator of a state licensing board during the course of any investigation authorized by law.

➔ The records must be made available at a place within the depository convenient for physical inspection, and inspection must be permitted at all reasonable office hours and for a reasonable length of time. The person who owns or operates an ambulance shall also furnish a copy of the records to each person described in this subsection who requests it and pays the actual cost of postage, if any, and the costs of making the copy, not to exceed 60 cents per page for photocopies. No administrative fee or additional service fee of any kind may be charged for furnishing a copy of the records.

5. Records made available to a representative or investigator must not be used at any public hearing unless:

(a) The patient named in the records has consented in writing to their use; or

(b) Appropriate procedures are utilized to protect the identity of the patient from public disclosure.

6. Subsection 5 does not prohibit:

(a) A state licensing board from providing to a provider of health care or owner or operator of an ambulance against whom a complaint or written allegation has been filed, or to his attorney, information on the identity of a patient whose records may be used in a public hearing relating to the complaint or allegation, but the provider of health care or owner or operator of an ambulance and his attorney shall keep the information confidential.

(b) The Attorney General from using health care records in the course of a civil or criminal action against the patient or provider of health care.

7. A provider of health care or owner or operator of an ambulance, his agents and employees are immune from any civil action for any disclosures made in accordance with the provisions of this section or any consequential damages.

8. For the purposes of this section:

(a) "Guardian" means a person who has qualified as the guardian of a minor pursuant to testamentary or judicial appointment, but does not include a guardian ad litem.

(b) *"Living trust" means an inter vivos trust created by a natural person:*



1 *(1) Which was revocable by the person during the lifetime*
2 *of the person; and*

3 *(2) Who was one of the beneficiaries of the trust during the*
4 *lifetime of the person.*

5 (c) “Parent” means a natural or adoptive parent whose parental
6 rights have not been terminated.

7 ~~(c)~~ (d) “Personal representative” has the meaning ascribed to
8 it in NRS 132.265.

9 **Sec. 6.** This act becomes effective upon passage and approval.

