

ASSEMBLY BILL NO. 136—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA ASSOCIATION OF COUNTIES)

FEBRUARY 21, 2007

Referred to Committee on Judiciary

SUMMARY—Provides for the recovery of certain fees and expenses for the settlement or administration of small estates. (BDR 12-373)

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 the administration of estates; providing for the recovery of reasonable fees and necessary expenses of the petitioner and the attorney for certain smaller estates; providing for the recovery of reasonable fees and necessary expenses of a public administrator who administers certain smaller estates; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, if a person dies leaving an estate that does not exceed \$75,000 in value and the person is not survived by a spouse or minor child, upon good cause shown, the estate must not be administered but must be assigned and distributed in a particular order. (NRS 146.070) **Section 1** of this bill amends the order of distribution for the estate by providing that after the estate is used to pay certain debts or expenses, including, funeral expenses, the estate must be used to pay the reasonable fee and necessary expenses, as determined and approved by the court, of the person or governmental agency who files the petition to settle the estate and the attorney for the estate.

Under existing law, if a person dies leaving property in this State that does not exceed \$20,000 in value, a public administrator may administer the estate of the person, without procuring letters of administration, upon filing an affidavit with the court. (NRS 253.0403) **Section 2** of this bill provides that after the estate is used to pay certain debts or expenses, including, funeral expenses, the estate must be used to pay the reasonable fee and necessary expenses, as determined and approved by the court, of the public administrator.



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

Section 1. NRS 146.070 is hereby amended to read as follows:

146.070 1. If a person dies leaving an estate the gross value of which, after deducting any encumbrances, does not exceed \$75,000, and there is a surviving spouse or minor child or minor children of the decedent, the estate must not be administered upon, but the whole estate, after directing such payments as may be deemed just, must be, by an order for that purpose, assigned and set apart for the support of the surviving spouse or minor child or minor children, or for the support of the minor child or minor children, if there is no surviving spouse. Even if there is a surviving spouse, the court may, after directing such payments, set aside the whole of the estate to the minor child or minor children, if it is in their best interests.

2. If there is no surviving spouse or minor child of the decedent and the gross value of a decedent's estate, after deducting any encumbrances, does not exceed \$75,000, upon good cause shown, the court shall order that the estate not be administered upon, but the whole estate be assigned and set apart in the following order:

(a) To the payment of funeral expenses, expenses of last illness, money owed to the Department of Health and Human Services as a result of payment of benefits for Medicaid and creditors, if there are any; ~~land~~

(b) To the payment of the reasonable fee and all necessary expenses, as determined and approved by the court, of the person or governmental agency filing a petition pursuant to subsection 3 and the attorney representing the estate; and

~~(b)~~ (c) Any balance remaining to the claimant or claimants entitled thereto pursuant to a valid will of the decedent ~~H~~ and , if there is no valid will, pursuant to intestate succession.

3. Proceedings taken under this section, whether or not the decedent left a valid will, must not begin until at least 30 days after the death of the decedent and must be originated by a petition containing:

(a) A specific description of all the decedent's property.

(b) A list of all the liens and mortgages of record at the date of the decedent's death.

(c) An estimate of the value of the property.

(d) A statement of the debts of the decedent so far as known to the petitioner.

(e) The names and residences of the heirs and devisees of the decedent and the age of any who is a minor and the relationship of



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1 the heirs and devisees to the decedent, so far as known to the
2 petitioner.

3 4. The clerk shall set the petition for hearing , and the
4 petitioner shall give notice of the petition and hearing in the manner
5 provided in NRS 155.010 to the decedent's heirs and devisees and
6 to the Director of the Department of Health and Human Services. If
7 a complete copy of the petition is not enclosed with the notice, the
8 notice must include a statement setting forth to whom the estate is
9 being set aside.

10 5. No court or clerk's fees may be charged for the filing of any
11 petition in, or order of court thereon, or for any certified copy of the
12 petition or order in an estate not exceeding \$2,500 in value.

13 6. If the court finds that the gross value of the estate, less
14 encumbrances, does not exceed the sum of \$75,000, the court may
15 direct that the estate be distributed to the father or mother of a minor
16 heir or devisee, with or without the filing of any bond, or to a
17 custodian under chapter 167 of NRS, or may require that a general
18 guardian be appointed and that the estate be distributed to the
19 guardian, with or without bond, as in the discretion of the court is
20 deemed to be in the best interests of the minor. The court may direct
21 the manner in which the money may be used for the benefit of the
22 minor.

23 **Sec. 2.** NRS 253.0403 is hereby amended to read as follows:

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

29 2. The affidavit must provide:

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

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

33 (c) That the gross value of the decedent's property in this State
34 does not exceed \$20,000;

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

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

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

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

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



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

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

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

4. If the affiant:

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

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

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

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

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

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

7. If a public administrator files an affidavit pursuant to this section, the court shall order that the whole estate be assigned and set apart in the following order:

(a) To the payment of funeral expenses, expenses of last illness, money owed to the Department of Health and Human Services as a result of payment of benefits for Medicaid and creditors, if there are any;

(b) To the payment of the reasonable fee and all necessary expenses, as determined and approved by the court, of the public administrator; and



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- 1 *(c) Any balance remaining to the claimant or claimants*
- 2 *entitled thereto pursuant to a valid will of the decedent and, if*
- 3 *there is no valid will, pursuant to intestate succession.*
- 4 **Sec. 3.** This act becomes effective upon passage and approval.

