

SENATE BILL NO. 420—SENATOR LEE

MARCH 19, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions relating to property. (BDR 13-1305)

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 property; revising the provisions relating to the transfer of supervision of trusts; revising the provisions relating to spendthrift trusts; increasing the civil liability for conversion of property before letters of administration are granted; revising the provisions relating to succession of property under certain circumstances; revising the provisions relating to the summary administration of estates and the distribution of certain estates; revising the provisions relating to a petition concerning the affairs of a trust; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a court may, with the concurrence of the beneficiary, transfer supervision of a trust to another jurisdiction upon petition by any person appointed by the court or a trustee. (NRS 164.130) **Section 1** of this bill provides that a trustee or beneficiary may petition the court for a transfer of supervision, without the concurrence of the beneficiary.

Existing law establishes certain limitations of actions involving transfer of property to a spendthrift trust. (NRS 166.170) **Section 3** of this bill provides that a person is deemed to have discovered a transfer at the time a public record is made of the transfer for the purpose of setting the statute of limitations for certain legal actions that may arise after the transfer.

Existing law provides that property held in a spendthrift trust for a judgment debtor or any other beneficiary is not liable to execution if the trust was not created by the beneficiary and the fund so held in trust has not proceeded from the beneficiary. (NRS 21.080) **Section 4** of this bill provides that property held in a spendthrift trust which proceeded from a beneficiary is not liable to execution if the beneficiary is the settlor of the trust and the trust is a spendthrift trust that was created in compliance with applicable law.



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Existing law provides for the distribution of an estate by right of representation to the children of any deceased brother or sister if there is no issue, surviving spouse or father or mother. (NRS 134.060) **Section 7** of this bill provides for such succession by the children of any deceased brother or sister in equal shares, per capita.

Section 8 of this bill increases the liability for the conversion, taking or alienation of property by a person before the granting of letters of administration from double the value of the property converted, taken or alienated to triple the value. (NRS 143.100)

Existing law allows a court to order summary administration of an estate if the gross value of the estate does not exceed \$200,000 and requires the personal representative of an estate to petition the court for an order revoking summary administration if the gross value of the estate exceeds \$200,000 after an order for summary administration is made. (NRS 145.040, 145.110) **Sections 9 and 10** of this bill provide that the threshold amount of \$200,000 for either summary administration of an estate or a revocation of summary administration must be determined after deducting any encumbrances.

Existing law sets forth the manner in which a court may order the distribution of small estates not exceeding \$75,000. (NRS 146.070) **Section 11** of this bill increases the amount from \$75,000 to \$100,000.

Existing law sets forth certain aspects of the affairs of a trust regarding which a trustee or beneficiary may petition the court. (NRS 153.031) **Section 12** of this bill provides that a trustee or beneficiary may also petition the court to compel compliance with the terms of the trust or other applicable law. **Section 12** further provides that the court may, in addition to any other relief granted by the court, reduce the trustee's compensation and order the trustee to pay to the beneficiary all reasonable costs and attorney's fees incurred as a result of preparing a petition.

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

Section 1. NRS 164.130 is hereby amended to read as follows:
164.130 Upon petition by any ~~[person appointed by the court or otherwise as trustee, with the concurrence of the beneficiary or beneficiaries,]~~ *trustee or beneficiary*, a court having jurisdiction of a trust may transfer supervision of the trust to any ~~[judicial]~~ *court* district within the State, or to any court outside Nevada which accepts jurisdiction over the trust, when the convenience of beneficiaries, trustees, attorneys or other interested persons makes a transfer desirable.

Sec. 2. NRS 166.040 is hereby amended to read as follows:
166.040 1. Any person competent by law to execute a will or deed may, by writing only, duly executed, by will, conveyance or other writing, create a spendthrift trust in real, personal or mixed property for the benefit of:
(a) A person other than the settlor;
(b) The settlor if the writing is irrevocable, does not require that any part of the income or principal of the trust be distributed to the



1 settlor, and was not intended to hinder, delay or defraud known
2 creditors; or

3 (c) Both the settlor and another person if the writing meets the
4 requirements of paragraph (b).

5 2. For the purposes of this section, a writing:

6 (a) Is “irrevocable” even if the settlor may prevent a distribution
7 from the trust or holds a testamentary special power of appointment
8 or similar power.

9 (b) Does not “require” a distribution to the settlor if *the trust*
10 *instrument provides that* he may receive it only in the discretion of
11 another person.

12 **Sec. 3.** NRS 166.170 is hereby amended to read as follows:

13 166.170 **1.** A person may not bring an action with respect to
14 a transfer of property to a spendthrift trust:

15 ~~[(1)]~~ **(a)** If he is a creditor when the transfer is made, unless the
16 action is commenced within:

17 ~~[(a)]~~ **(1)** Two years after the transfer is made; or

18 ~~[(b)]~~ **(2)** Six months after he discovers or reasonably should
19 have discovered the transfer,
20 **↳** whichever is later.

21 ~~[(2)]~~ **(b)** If he becomes a creditor after the transfer is made,
22 unless the action is commenced within 2 years after the transfer is
23 made.

24 **2.** *A person shall be deemed to have discovered a transfer at*
25 *the time a public record is made of the transfer, including, without*
26 *limitation, the conveyance of real property that is recorded in the*
27 *office of the county recorder of the county in which the property is*
28 *located or the filing of a financing statement pursuant to chapter*
29 *104 of NRS.*

30 **3.** *As used in this section, “creditor” has the meaning*
31 *ascribed to it in subsection 4 of NRS 112.150.*

32 **Sec. 4.** NRS 21.080 is hereby amended to read as follows:

33 21.080 **1.** All goods, chattels, ~~[(moneys)]~~ **money** and other
34 property, real and personal, of the judgment debtor, or any interest
35 therein of the judgment debtor not exempt by law, and all property
36 and rights of property seized and held under attachment in the
37 action, ~~[(shall be)]~~ **are** liable to execution. Subject to the provisions of
38 chapter 104 of NRS, shares and interests in any corporation or
39 company, and debts and credits and other property not capable of
40 manual delivery, may be attached in execution in like manner as
41 upon writs of attachments. Gold dust and bullion ~~[(shall)]~~ **must** be
42 returned by the officer as so much money collected, at its current
43 value, without exposing the same to sale. Until a levy, property
44 ~~[(shall)]~~ **is** not ~~[(be)]~~ affected by the execution.



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2. This chapter does not authorize the seizure of, or other interference with, any money, thing in action, lands or other property held in spendthrift trust for a judgment debtor, or held in such trust for any beneficiary, pursuant to any judgment, order or process of any bankruptcy or other court directed against any such beneficiary or his trustee . ~~[, where the trust has been created by, or]~~ *This subsection does not apply to the interest of the beneficiary of a trust where the fund so held in trust has proceeded from ~~[, any person other than the judgment debtor or beneficiary himself.]~~ the beneficiary unless:*

(a) *The beneficiary is the settlor of the trust; and*

(b) *The trust is a spendthrift trust that was created in compliance with the provisions of chapter 166 of NRS.*

Sec. 5. Chapter 132 of NRS is hereby amended by adding thereto a new section to read as follows:

“District court” or “court” means a district court of this State sitting in probate or otherwise adjudicating matters pursuant to this title.

Sec. 6. NRS 132.025 is hereby amended to read as follows:

132.025 As used in this title, unless the context otherwise requires, the words and terms defined in NRS 132.030 to 132.370, inclusive, *and section 5 of this act* have the meanings ascribed to them in those sections.

Sec. 7. NRS 134.060 is hereby amended to read as follows:

134.060 If there is no issue, surviving spouse, or father or mother, then the estate goes in equal shares to the brothers and sisters of the decedent and to the children of any deceased brother or sister ~~[by right of representation.]~~ *in equal shares, per capita.*

Sec. 8. NRS 143.100 is hereby amended to read as follows:

143.100 If any person, before the granting of letters, converts, takes or alienates any of the money, goods, chattels or effects of a decedent, that person is chargeable and liable to an action by the personal representative for ~~[double]~~ *triple* the value of the property so converted, taken or alienated, to be recovered for the benefit of the estate.

Sec. 9. NRS 145.040 is hereby amended to read as follows:

145.040 If it is made to appear to the court that the gross value of the estate , *after deducting any encumbrances*, does not exceed \$200,000, the court may, if deemed advisable considering the nature, character and obligations of the estate, enter an order for a summary administration of the estate.

Sec. 10. NRS 145.110 is hereby amended to read as follows:

145.110 If at any time after the entry of an order for the summary administration of an estate it appears that the gross value of the estate , *after deducting any encumbrances*, exceeds \$200,000



1 as of the death of the decedent, the personal representative shall
2 petition the court for an order revoking summary administration.
3 The court may, if deemed advisable considering the nature,
4 character and obligations of the estate, provide in its order revoking
5 summary administration that regular administration of the estate
6 may proceed unabated upon providing such portions of the regular
7 proceedings and notices as were dispensed with by the order for
8 summary administration.

9 **Sec. 11.** NRS 146.070 is hereby amended to read as follows:

10 146.070 1. If a person dies leaving an estate the gross value
11 of which, after deducting any encumbrances, does not exceed
12 ~~[\$75,000,]~~ \$100,000, and there is a surviving spouse or minor child
13 or minor children of the decedent, the estate must not be
14 administered upon, but the whole estate, after directing such
15 payments as may be deemed just, must be, by an order for that
16 purpose, assigned and set apart for the support of the surviving
17 spouse or minor child or minor children, or for the support of the
18 minor child or minor children, if there is no surviving spouse. Even
19 if there is a surviving spouse, the court may, after directing such
20 payments, set aside the whole of the estate to the minor child or
21 minor children, if it is in their best interests.

22 2. If there is no surviving spouse or minor child of the decedent
23 and the gross value of a decedent's estate, after deducting any
24 encumbrances, does not exceed ~~[\$75,000,]~~ \$100,000, upon good
25 cause shown, the court shall order that the estate not be administered
26 upon, but the whole estate be assigned and set apart in the following
27 order:

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

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

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

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

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

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

43 (d) A statement of the debts of the decedent so far as known to
44 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 the heirs and devisees to the decedent, so far as known to the petitioner.

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

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

6. If the court finds that the gross value of the estate, less encumbrances, does not exceed the sum of ~~[\$75,000,]~~ **\$100,000**, the court may direct that the estate be distributed to the father or mother of a minor heir or devisee, with or without the filing of any bond, or to a custodian under chapter 167 of NRS, or may require that a general guardian be appointed and that the estate be distributed to the guardian, with or without bond, as in the discretion of the court is deemed to be in the best interests of the minor. The court may direct the manner in which the money may be used for the benefit of the minor.

Sec. 12. NRS 153.031 is hereby amended to read as follows:

153.031 1. A trustee or beneficiary may petition the court regarding any aspect of the affairs of the trust, including:

- (a) Determining the existence of the trust;
- (b) Determining the construction of the trust instrument;
- (c) Determining the existence of an immunity, power, privilege, right or duty;
- (d) Determining the validity of a provision of the trust;
- (e) Ascertaining beneficiaries and determining to whom property is to pass or be delivered upon final or partial termination of the trust, to the extent not provided in the trust instrument;
- (f) Settling the accounts and reviewing the acts of the trustee, including the exercise of discretionary powers;
- (g) Instructing the trustee;
- (h) Compelling the trustee to report information about the trust or account, to the beneficiary;
- (i) Granting powers to the trustee;
- (j) Fixing or allowing payment of the trustee's compensation, or reviewing the reasonableness of his compensation;
- (k) Appointing or removing a trustee;
- (l) Accepting the resignation of a trustee;



- 1 (m) Compelling redress of a breach of the trust;
2 (n) Approving or directing the modification or termination of
3 the trust;
4 (o) Approving or directing the combination or division of trusts;
5 ~~{and}~~
6 (p) Amending or conforming the trust instrument in the manner
7 required to qualify the estate of a decedent for the charitable estate
8 tax deduction under federal law, including the addition of
9 mandatory requirements for a charitable-remainder trust ~~{and}~~; and
10 (q) *Compelling compliance with the terms of the trust or other*
11 *applicable law.*

12 2. A petition under this section must state the grounds of the
13 petition and the name and address of each interested person,
14 including the Attorney General if the petition relates to a charitable
15 trust, and the relief sought by the petition. Except as otherwise
16 provided in this chapter, the clerk shall set the petition for hearing
17 and the petitioner shall give notice for the period and in the manner
18 provided in NRS 155.010. The court may order such further notice
19 to be given as may be proper.

20 3. *If the court grants any relief to the petitioner, the court*
21 *may, in its discretion, order any or all of the following additional*
22 *relief if the court determines that such additional relief is*
23 *appropriate to redress or avoid an injustice:*

24 (a) *Order a reduction in the trustee's compensation.*

25 (b) *Order the trustee to pay to the petitioner or any other party*
26 *all reasonable costs incurred by the party to adjudicate the affairs*
27 *of the trust pursuant to this section, including, without limitation,*
28 *reasonable attorney's fees. The trustee may not be held personally*
29 *liable for the payment of such costs unless the court determines*
30 *that the trustee was negligent in the performance of or breached*
31 *his fiduciary duties.*

