

ASSEMBLY BILL NO. 180—COMMITTEE ON JUDICIARY

FEBRUARY 27, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing estates. (BDR 12-805)

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; providing that a dependent adult child of a decedent is eligible to receive from the decedent's estate certain support for family members; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a parent to support his or her child beyond the age of majority if the child is unable to support himself or herself because of a medically determinable physical or mental impairment. (NRS 125B.110) Existing law provides certain support from a decedent's estate to the surviving spouse, minor child or minor children of a decedent. (NRS 146.010-146.070) This bill amends those provisions to also provide support to a dependent adult child of the decedent. **Section 1** of this bill defines "dependent adult child" as a child of a decedent who is 18 years of age or older and who is unable to support himself or herself because of a medically determinable physical or mental impairment. **Section 2** of this bill provides that receiving certain support from the decedent's estate does not affect the dependent adult child's eligibility for other benefits.

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

Section 1. Chapter 146 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, "dependent adult child" means a child of a decedent who:*

- 1. Is 18 years of age or older;*
- 2. Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental*



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1 *impairment which can be expected to result in death or which has*
2 *lasted or can be expected to last for a continuous period of not less*
3 *than 12 months; and*

4 *3. Is not self-supporting. For the purposes of this subsection,*
5 *a child of a decedent is self-supporting if he or she receives public*
6 *assistance and that assistance is sufficient to meet the child's*
7 *needs.*

8 **Sec. 3.** *Nothing in this chapter shall impair or otherwise*
9 *affect the eligibility of a dependent adult child to receive benefits*
10 *from any other source.*

11 **Sec. 4.** NRS 146.010 is hereby amended to read as follows:

12 146.010 Except as otherwise provided in this chapter or in
13 NRS 125.510, if a person dies leaving a surviving spouse , ~~or~~ a
14 minor child or minor children, *or a dependent adult child or*
15 *dependent adult children*, the surviving spouse, minor child or
16 minor children , *or dependent adult child or dependent adult*
17 *children* are entitled to remain in possession of the homestead and
18 of all the wearing apparel and provisions in the possession of the
19 family, and all the household furniture, and are also entitled to a
20 reasonable provision for their support, to be allowed by the court.

21 **Sec. 5.** NRS 146.020 is hereby amended to read as follows:

22 146.020 Upon the filing of the inventory or at any time
23 thereafter during the administration of the estate, the court, on its
24 own motion or upon petition by an interested person, may, if
25 deemed advisable considering the needs and resources of the
26 surviving spouse, minor child or minor children, *or dependent adult*
27 *child or dependent adult children*, set apart for the use of the
28 surviving spouse, minor child or minor children , *or dependent*
29 *adult child or dependent adult children* of the decedent all of the
30 personal property which is exempt by law from execution, and shall,
31 in accordance with NRS 146.050, set apart the homestead, as
32 designated by the general homestead law then in force, whether the
33 homestead has theretofore previously been selected as required by
34 law or not, and the property thus set apart is not subject to
35 administration.

36 **Sec. 6.** NRS 146.030 is hereby amended to read as follows:

37 146.030 1. If the whole property exempt by law is set apart
38 and is not sufficient for the support of the surviving spouse, minor
39 child or minor children, *or dependent adult child or dependent*
40 *adult children*, the court may, if deemed advisable considering the
41 needs and resources of the surviving spouse, minor child or minor
42 children, *or dependent adult child or dependent adult children*
43 make such reasonable allowance out of the estate as is necessary for
44 the maintenance of the family according to their circumstances
45 during the progress of the administration of the estate, which, in



1 case of an insolvent estate, may not be longer than 1 year after
2 granting letters of administration.

3 2. If the surviving spouse , ~~for~~ any minor child *or any*
4 *dependent adult child* has a reasonable maintenance derived from
5 other property, and there are other persons entitled to a family
6 allowance, the allowance must be granted only to those who do not
7 have such maintenance, or the allowance may be apportioned in
8 such manner as may be just.

9 **Sec. 7.** NRS 146.050 is hereby amended to read as follows:

10 146.050 1. If the homestead was selected by the spouses, or
11 either of them, during their marriage, and recorded while both were
12 living, as provided in chapter 115 of NRS, it vests, on the death of
13 either spouse, absolutely in the survivor, unless vesting is otherwise
14 required pursuant to subsection 2 of NRS 115.060.

15 2. If no homestead was so selected, a homestead may be set
16 apart by the court to the surviving spouse, minor child or minor
17 children , *or dependent adult child or dependent adult children* of
18 the decedent for a limited period if deemed advisable considering
19 the needs and resources of the family and the nature, character and
20 obligations of the estate. The duration of the homestead must be
21 designated in the order setting it apart and may not extend beyond
22 the lifetime of the surviving spouse or the minority of any *minor*
23 *child or beyond the period during which any child* of the decedent
24 ~~is~~ *is a dependent adult child*, whichever is longer. A homestead so
25 set apart then vests, subject to the setting apart:

26 (a) If set apart from the separate property of the decedent, in the
27 heirs or devisees of the decedent.

28 (b) If set apart from community property, one-half in the
29 surviving spouse and one-half in the devisees of the decedent, or if
30 no disposition is made, then entirely in the surviving spouse.

31 3. In either case referred to in subsection 1 or 2, the homestead
32 is not subject to the payment of any debt or liability existing against
33 the spouses, or either of them, at the time of death of either, unless
34 the debt or liability is secured by a mortgage or lien.

35 **Sec. 8.** NRS 146.070 is hereby amended to read as follows:

36 146.070 1. If a person dies leaving an estate the gross value
37 of which, after deducting any encumbrances, does not exceed
38 \$100,000, and there is a surviving spouse ~~for~~ , *a* minor child or
39 minor children , *or a dependent adult child or dependent adult*
40 *children* of the decedent, the estate must not be administered upon,
41 but the whole estate, after directing such payments as may be
42 deemed just, must be, by an order for that purpose, assigned and set
43 apart for the support of the surviving spouse , ~~for~~ minor child or
44 minor children, *or dependent adult child or dependent adult*
45 *children*, or for the support of the minor child or minor children ~~is~~



1 *or the dependent adult child or dependent adult children*, if there is
2 no surviving spouse. Even if there is a surviving spouse, the court
3 may, after directing such payments, set aside the whole of the estate
4 to the minor child or minor children ~~H~~ *or the dependent adult child*
5 *or dependent adult children*, if it is in their best interests.

6 2. If there is no surviving spouse, ~~for~~ minor child *or*
7 *dependent adult child* of the decedent and the gross value of a
8 decedent's estate, after deducting any encumbrances, does not
9 exceed \$100,000, upon good cause shown, the court shall order that
10 the estate not be administered upon, but the whole estate be assigned
11 and set apart in the following order:

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

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

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

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

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

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

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

29 (e) The names and residences of the heirs and devisees of the
30 decedent and the age of any who is a minor, ~~and~~ the relationship
31 of the heirs and devisees to the decedent, so far as known to the
32 petitioner ~~H~~, *and whether any of the heirs and devisees of the*
33 *decedent is a dependent adult child of the decedent.*

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

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

44 6. If the court finds that the gross value of the estate, less
45 encumbrances, does not exceed the sum of \$100,000, the court may



1 direct that the estate be distributed to the father or mother of a minor
2 heir or devisee ~~or~~ *or a dependent adult child who is an heir or*
3 *devisee*, with or without the filing of any bond, or to a custodian
4 under chapter 167 of NRS, or may require that a general guardian be
5 appointed and that the estate be distributed to the guardian, with or
6 without bond, as in the discretion of the court is deemed to be in the
7 best interests of the minor ~~or~~ *or dependent adult child*. The court
8 may direct the manner in which the money may be used for the
9 benefit of the minor ~~or~~ *or dependent adult child*.

10 **Sec. 9.** NRS 111.779 is hereby amended to read as follows:

11 111.779 1. Except as otherwise provided in NRS 21.090 and
12 other applicable law, a transferee of a nonprobate transfer is liable to
13 the probate estate of the decedent for allowed claims against that
14 decedent's probate estate to the extent the estate is insufficient to
15 satisfy those claims.

16 2. The liability of a nonprobate transferee may not exceed the
17 value of nonprobate transfers received or controlled by that
18 transferee.

19 3. Nonprobate transferees are liable for the insufficiency
20 described in subsection 1 in the following order of priority:

21 (a) A transferee specified in the decedent's will or any other
22 governing instrument as being liable for such an insufficiency, in the
23 order of priority provided in the will or other governing instrument;

24 (b) The trustee of a trust serving as the principal nonprobate
25 instrument in the decedent's estate plan as shown by its designation
26 as devisee of the decedent's residuary estate or by other facts or
27 circumstances, to the extent of the value of the nonprobate transfer
28 received or controlled; and

29 (c) Other nonprobate transferees, in proportion to the values
30 received.

31 4. Unless otherwise provided by the trust instrument, interests
32 of beneficiaries in all trusts incurring liabilities under this section
33 abate as necessary to satisfy the liability, as if all the trust
34 instruments were a single will and the interests were devised under
35 it.

36 5. If a nonprobate transferee is a spouse, ~~or~~ a minor child ~~or~~
37 *or a dependent adult child*, the nonprobate transferee may petition
38 the court to be excluded from the liability imposed by this section as
39 if the nonprobate property received by the spouse, ~~or~~ minor child
40 *or dependent adult child* were part of the decedent's estate. Such a
41 petition may be made pursuant to the applicable provisions of
42 chapter 146 of NRS, including, without limitation, the provisions of
43 NRS 146.010, NRS 146.020 without regard to the filing of an
44 inventory and subsection 2 of NRS 146.070.



1 6. A provision made in one instrument may direct the
2 apportionment of the liability among the nonprobate transferees
3 taking under that or any other governing instrument. If a provision
4 in one instrument conflicts with a provision in another, the later one
5 prevails.

6 7. Upon due notice to a nonprobate transferee, the liability
7 imposed by this section is enforceable in probate proceedings in this
8 State, whether or not the transferee is located in this State.

9 8. If a probate proceeding is pending, a proceeding under this
10 section may be commenced by the personal representative of the
11 decedent's estate or, if the personal representative declines to do so,
12 by a creditor in the name of the decedent's estate, at the expense of
13 the creditor and not of the estate. If a creditor successfully
14 establishes an entitlement to payment under this section, the court
15 must order the reimbursement of the costs reasonably incurred by
16 the creditor, including attorney's fees, from the transferee from
17 whom the payment is to be made, subject to the limitations of
18 subsection 2, or from the estate as a cost of administration, or
19 partially from each, as the court deems just. A personal
20 representative who declines in good faith to commence a requested
21 proceeding incurs no personal liability for declining.

22 9. If a probate proceeding is not pending, a proceeding under
23 this section may be commenced as a civil action by a creditor at the
24 expense of the creditor.

25 10. If a proceeding is commenced pursuant to this section, it
26 must be commenced:

27 (a) As to a creditor whose claim was allowed after proceedings
28 challenging disallowance of the claim by the personal
29 representative, within 60 days after final allowance of the claim by
30 the probate court or within 1 year after the decedent's death,
31 whichever is later.

32 (b) As to a creditor whose claim against the decedent is being
33 adjudicated in a separate proceeding that is still pending 1 year after
34 the decedent's death, within 60 days after the adjudication of the
35 claim in favor of the creditor is final and no longer subject to
36 reconsideration or appeal.

37 (c) As to the recovery of benefits paid for Medicaid, within 3
38 years after the decedent's death.

39 (d) As to all other creditors, within 1 year after the decedent's
40 death.

41 11. Unless a written notice asserting that a decedent's probate
42 estate is nonexistent or insufficient to pay allowed claims and
43 statutory allowances has been received from the decedent's personal
44 representative, the following rules apply:



(a) Payment or delivery of assets by a financial institution, registrar or other obligor to a nonprobate transferee in accordance with the terms of the governing instrument controlling the transfer releases the obligor from all claims for amounts paid or assets delivered.

(b) A trustee receiving or controlling a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to assets received by the beneficiary.

12. Notwithstanding any provision of this section to the contrary:

(a) A creditor has no claim against property transferred pursuant to a power of appointment exercised by a decedent unless it was exercisable in favor of the decedent or the decedent's estate.

(b) A purchaser for value of property or a lender who acquires a security interest in the property from a beneficiary of a nonprobate transfer after the death of the owner, in good faith:

(1) Takes the property free of any claims or of liability to the owner's estate, creditors of the owner's estate, persons claiming rights as beneficiaries under the nonprobate transfer or heirs of the owner's estate, in absence of actual knowledge that the transfer was improper; and

(2) Has no duty to verify sworn information relating to the nonprobate transfer. The protection provided by this subparagraph applies to information that relates to the ownership interest of the beneficiary in the property and the beneficiary's right to sell, encumber and transfer good title to a purchaser or lender and does not relieve a purchaser or lender from the notice imparted by instruments of record respecting the property.

13. As used in this section ~~the~~ "devise":

(a) *"Dependent adult child" has the meaning ascribed to it in section 2 of this act.*

(b) *"Devise" has the meaning ascribed to it in NRS 132.095.*

