

CHAPTER.....

AN ACT relating to personal financial administration; enacting the Uniform Powers of Appointment Act; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill enacts the Uniform Powers of Appointment Act. **Section 16** of this bill defines a “power of appointment” as a power that enables the holder of the power, acting in a nonfiduciary capacity, to designate a recipient of an ownership interest in or another power of appointment over property subject to the power of appointment. **Section 22** of this bill provides that: (1) the creation, revocation or amendment of a power of appointment is governed by the law of the domicile of the person creating the power of appointment at the relevant time; and (2) the exercise, release or disclaimer of the power of appointment is governed by the law of the domicile of the holder of the power of appointment at the relevant time.

Sections 23-29 of this bill govern the creation, revocation and amendment of a power of appointment. Generally, under **section 24**, to create a power of appointment, an instrument must: (1) be a valid instrument under applicable law; (2) transfer the property subject to the power of appointment; and (3) manifest the intent of the person creating the power of appointment to create in another person a power of appointment over property that is exercisable in favor of permissible appointees. **Section 24** prohibits the creation of a power of appointment in a deceased individual but, subject to the rule against perpetuities, authorizes a power of appointment to be created in unborn or unascertained powerholder. **Section 25** prohibits a person who holds a power of appointment from transferring the power to another person. **Sections 26-28**: (1) set forth rules for determining the type of power of appointment created by an instrument; and (2) with certain exceptions, provide that unless the terms of the instrument creating a power of appointment provide otherwise, the power of appointment is presently exercisable, exclusionary and general. **Section 29** authorizes a person creating a power of appointment to revoke or amend the power of appointment only to the extent that: (1) the instrument creating the power is revocable by the person creating the power; or (2) the person creating the power has reserved a power of revocation or amendment in the instrument creating the power.

Sections 30-43 of this bill govern the exercise of a power of appointment. Under **section 30**, a power of appointment is exercised only if: (1) the instrument exercising the power is valid under applicable law; (2) the terms of that instrument manifest the powerholder's intent to exercise the power and satisfy the requirements for the exercise of the power imposed by the person creating the power; and (3) the appointment is a permissible exercise of the power. **Sections 31 and 32** set forth rules for determining whether an instrument manifests the intent of the person holding a power of appointment to exercise the power. Specifically: (1) **section 31** provides that a residuary clause in a person's will or a similar clause in a trust will manifest an intent to exercise a power of appointment only under certain circumstances; and (2) **section 32** sets forth a rule for determining whether a powerholder's exercise of a power of appointment in an instrument that does not refer to a particular power of appointment constitutes the exercise of a power of appointment acquired after the execution of the instrument. **Section 33** sets forth the circumstances under which substantial compliance with the formal requirements of appointment imposed by the person creating a power of appointment is sufficient. **Section 34** sets forth the permissible appointments by the holder of a



general power of appointment and the holder of a nongeneral power of appointment. **Sections 35 and 36** set forth certain impermissible exercises of a power of appointment, and **section 38** sets forth rules that apply when a person who holds a power of appointment makes an impermissible appointment. **Section 37** provides that if a person who holds a power of appointment uses the same instrument to dispose of his or her property and to exercise a power of appointment, the property must be allocated in the permissible manner that best carries out the intent of the person who holds the power of appointment. **Sections 39-41** govern property that is subject to a power of appointment but is not appointed for various reasons. **Section 42** provides that to the extent an appointee of property would have taken the property as a taker in default, the appointee takes the property as a taker in default rather than under an exercise of the power of appointment. **Section 43** authorizes a holder of a power of appointment to revoke or amend an exercise of the power under certain limited circumstances.

Sections 44-50 of this bill govern the disclaimer or release of a power of appointment. Generally, a disclaimer prevents the acquisition of a power of appointment and a release of a power of appointment occurs after a holder of a power of appointment acquires the power. **Section 44** authorizes the holder of a power of appointment to disclaim, an appointee of property under a power of appointment of a taker in default to disclaim the power of appointment or property, as applicable, in accordance with existing law governing disclaimers of property. **Section 45** authorizes a holder of a power of appointment to release the power, in whole or in part, unless otherwise provided in the instrument creating the power, and **section 46** prescribes the method for the release of a power of appointment. **Section 47** authorizes a holder of a power of appointment to revoke or amend a release of a power of appointment under certain limited circumstances. **Section 48** authorizes a holder of a presently exercisable power of appointment to: (1) contract not to exercise the power; or (2) exercise the power if the contract when made does not confer a benefit on an impermissible appointee. **Section 49** authorizes the holder of a power of appointment that is not presently exercisable to contract to exercise or not to exercise the power only under limited circumstances. **Section 50** provides that if a holder of a power of appointment breaches a contract to appoint or not appoint property subject to a power of appointment, the remedy for such breach is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

Sections 51-54 of this bill govern the rights of a creditor of a holder of a power of appointment with respect to property subject to the power. **Sections 51 and 52** govern the claims of creditors to property that is subject to a general power of appointment. **Section 53** governs a power to withdraw property from a trust. **Section 54** governs the claims of creditors to property that is subject to a nongeneral power of appointment.



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

Section 1. Title 12 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 57, inclusive, of this act.

Sec. 2. *This chapter may be cited as the Uniform Powers of Appointment Act.*

Sec. 3. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 21, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *“Appointee” means a person to which a powerholder makes an appointment of appointive property.*

Sec. 5. *“Appointive property” means the property or property interest subject to a power of appointment.*

Sec. 6. *“Blanket-exercise clause” means a clause in an instrument which exercises a power of appointment and is not a specific-exercise clause. The term includes a clause that:*

1. Expressly uses the words “any power” in exercising any power of appointment the powerholder has;

2. Expressly uses the words “any property” in appointing any property over which the powerholder has a power of appointment; or

3. Disposes of all property subject to disposition by the powerholder.

Sec. 7. *“Donor” means a person that creates a power of appointment.*

Sec. 8. *“Exclusionary power of appointment” means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.*

Sec. 9. *“General power of appointment” means a power of appointment exercisable in favor of the powerholder, the powerholder’s estate, a creditor of the powerholder or a creditor of the powerholder’s estate.*

Sec. 10. *“Gift-in-default clause” means a clause identifying a taker in default of appointment.*

Sec. 11. *“Impermissible appointee” means a person that is not a permissible appointee.*

Sec. 12. *“Instrument” means a record.*



Sec. 13. *“Nongeneral power of appointment” means a power of appointment that is not a general power of appointment.*

Sec. 14. *“Permissible appointee” means a person in whose favor a powerholder may exercise a power of appointment.*

Sec. 15. *“Person” includes an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.*

Sec. 16. *“Power of appointment” means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.*

Sec. 17. *“Powerholder” means a person in which a donor creates a power of appointment.*

Sec. 18. *“Presently exercisable power of appointment” means a power of appointment exercisable by the powerholder at the relevant time. The term:*

1. Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard or the passage of a specified time only after:

- (a) The occurrence of the specified event;*
- (b) The satisfaction of the ascertainable standard; or*
- (c) The passage of the specified time; and*

2. Does not include a power exercisable only at the powerholder’s death.

Sec. 19. *“Specific-exercise clause” means a clause in an instrument which specifically refers to and exercises a particular power of appointment.*

Sec. 20. *“Taker in default of appointment” means a person that takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.*

Sec. 21. *“Terms of the instrument” means the manifestation of the intent of the maker of the instrument regarding the instrument’s provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.*

Sec. 22. *Unless the terms of the instrument creating a power of appointment manifest a contrary intent:*



1. *The creation, revocation or amendment of the power is governed by the law of the donor's domicile at the relevant time; and*

2. *The exercise, release or disclaimer of the power, or the revocation or amendment of the exercise, release or disclaimer of the power, is governed by the law of the powerholder's domicile at the relevant time.*

Sec. 23. *The common law and principles of equity supplement this chapter, except to the extent modified by this chapter or law of this State other than this chapter.*

Sec. 24. 1. *A power of appointment is created only if:*

(a) *The instrument creating the power:*

(1) *Is valid under applicable law; and*

(2) *Except as otherwise provided in subsection 2, transfers the appointive property; and*

(b) *The terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.*

2. *Subparagraph (2) of paragraph (a) of subsection 1 does not apply to the creation of a power of appointment by the exercise of a power of appointment.*

3. *A power of appointment may not be created in a deceased individual.*

4. *Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.*

Sec. 25. *A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.*

Sec. 26. *Subject to section 28 of this act, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:*

1. *Presently exercisable;*

2. *Exclusionary; and*

3. *Except as otherwise provided in section 27 of this act, general.*

Sec. 27. *Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:*

1. *The power is exercisable only at the powerholder's death; and*



2. *The permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors or the creditors of the powerholder's estate.*

Sec. 28. 1. *If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.*

2. *If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.*

3. *As used in this section, "adverse party" means a person with a substantial beneficial interest in property which would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder or a creditor of the powerholder's estate.*

Sec. 29. *A donor may revoke or amend a power of appointment only to the extent that:*

1. *The instrument creating the power is revocable by the donor; or*

2. *The donor reserves a power of revocation or amendment in the instrument creating the power of appointment.*

Sec. 30. *A power of appointment is exercised only:*

1. *If the instrument exercising the power is valid under applicable law;*

2. *If the terms of the instrument exercising the power:*

(a) *Manifest the powerholder's intent to exercise the power; and*

(b) *Subject to section 33 of this act, satisfy the requirements of exercise, if any, imposed by the donor; and*

3. *To the extent the appointment is a permissible exercise of the power.*

Sec. 31. 1. *A residuary clause in a powerholder's will or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if:*

(a) *The terms of the instrument containing the residuary clause do not manifest a contrary intent;*

(b) *The power is a general power exercisable in favor of the powerholder's estate;*

(c) *There is no gift-in-default clause or the clause is ineffective; and*

(d) *The powerholder did not release the power.*

2. *As used in this section:*



(a) “Residuary clause” does not include a residuary clause containing a blanket-exercise clause or a specific-exercise clause.

(b) “Will” includes a codicil and a testamentary instrument that revises another will.

Sec. 32. *Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:*

1. *Except as otherwise provided in subsection 2, a blanket-exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and*

2. *If the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift-in-default clause or the gift-in-default clause is ineffective.*

Sec. 33. *A powerholder’s substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:*

1. *The powerholder knows of and intends to exercise the power; and*

2. *The powerholder’s manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.*

Sec. 34. 1. *A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder’s estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder’s own property.*

2. *A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder’s estate may appoint only to those creditors.*

3. *Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:*

(a) *Make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;*

(b) *Create a general power in a permissible appointee; or*

(c) *Create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power.*

Sec. 35. 1. *Subject to NRS 133.200, an appointment to a deceased appointee is ineffective.*



2. Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

Sec. 36. 1. Except as otherwise provided in section 35 of this act, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

2. An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

Sec. 37. If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

Sec. 38. To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke or amend a trust, makes an ineffective appointment:

1. The gift-in-default clause controls the disposition of the ineffectively appointed property; or

2. If there is no gift-in-default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(a) Passes to:

(1) The powerholder if the powerholder is a permissible appointee and living; or

(2) If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) If there is no taker under paragraph (a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Sec. 39. To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke or amend a trust:

1. The gift-in-default clause controls the disposition of the unappointed property; or

2. If there is no gift-in-default clause or to the extent the clause is ineffective:

(a) Except as otherwise provided in paragraph (b), the unappointed property passes to:



(1) The powerholder if the powerholder is a permissible appointee and living; or

(2) If the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(b) To the extent the powerholder released the power, or if there is no taker under paragraph (a), the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Sec. 40. *To the extent a powerholder releases, ineffectively exercises or fails to exercise a nongeneral power of appointment:*

1. The gift-in-default clause controls the disposition of the unappointed property; or

2. If there is no gift-in-default clause or to the extent the clause is ineffective, the unappointed property:

(a) Passes to the permissible appointees if:

(1) The permissible appointees are defined and limited; and

(2) The terms of the instrument creating the power do not manifest a contrary intent; or

(b) If there is no taker under paragraph (a), passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Sec. 41. *Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.*

Sec. 42. *If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift-in-default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes under the clause.*

Sec. 43. *A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:*

1. The powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation; or

2. The terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

Sec. 44. *As provided by chapter 120 of NRS:*



1. *A powerholder may disclaim all or part of a power of appointment.*

2. *A permissible appointee, appointee or taker in default of appointment may disclaim all or part of an interest in appointive property.*

Sec. 45. *A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.*

Sec. 46. *A powerholder of a releasable power of appointment may release the power in whole or in part:*

1. *By substantial compliance with a method provided in the terms of the instrument creating the power; or*

2. *If the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a record manifesting the powerholder's intent by clear and convincing evidence.*

Sec. 47. *A powerholder may revoke or amend a release of a power of appointment only to the extent that:*

1. *The instrument of release is revocable by the powerholder; or*

2. *The powerholder reserves a power of revocation or amendment in the instrument of release.*

Sec. 48. *A powerholder of a presently exercisable power of appointment may contract:*

1. *Not to exercise the power; or*

2. *To exercise the power if the contract when made does not confer a benefit on an impermissible appointee.*

Sec. 49. *A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:*

1. *Is also the donor of the power; and*

2. *Has reserved the power in a revocable trust.*

Sec. 50. *The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.*

Sec. 51. 1. *Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in chapter 112 of NRS.*

2. *Subject to subsection 1, appointive property subject to a general power of appointment created by the powerholder is not*



subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

3. Subject to subsections 1 and 2, and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

(a) The powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(b) The powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

4. As used in this section, "power of appointment created by the powerholder" includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

Sec. 52. *1. Except as otherwise provided in subsection 2, appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:*

(a) The powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and

(b) The powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

2. Subject to subsection 3 of section 54 of this act, a power of appointment created by a person other than the powerholder which is subject to an ascertainable standard relating to an individual's health, education, support or maintenance within the meaning of 26 U.S.C. § 2041(b)(1)(A) or 26 U.S.C. § 2514(c)(1), as those provisions existed on October 1, 2017, is treated for purposes of sections 51 to 54, inclusive, of this act as a nongeneral power.

Sec. 53. *1. For purposes of sections 51 to 54, inclusive, of this act and except as otherwise provided in subsection 2, a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.*



2. *On the lapse, release or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in 26 U.S.C. § 2041(b)(2) and 26 U.S.C. § 2514(e) or the amount specified in 26 U.S.C. § 2503(b), as that section existed on October 1, 2017.*

Sec. 54. 1. *Except as otherwise provided in subsections 2 and 3, appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.*

2. *Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of any provision of chapter 112 of NRS.*

3. *If the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated for purposes of this sections 51 to 54, inclusive, of this act as a general power.*

Sec. 55. *In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.*

Sec. 56. *This chapter modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).*

Sec. 57. 1. *Except as otherwise provided in this chapter:*

(a) *This chapter applies to a power of appointment created before, on or after October 1, 2017;*

(b) *This chapter applies to a judicial proceeding concerning a power of appointment commenced on or after October 1, 2017;*

(c) *This chapter applies to a judicial proceeding concerning a power of appointment commenced before October 1, 2017, unless the court finds that application of a particular provision of this chapter would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of this chapter does not apply and the superseded law applies;*



(d) A rule of construction or presumption provided in this chapter applies to an instrument executed before October 1, 2017, unless there is a clear indication of a contrary intent in the terms of the instrument; and

(e) Except as otherwise provided in this subsection, an action done before October 1, 2017, is not affected by this chapter.

2. If a right is acquired, extinguished or barred on the expiration of a prescribed period that commenced under law of this State other than this chapter before October 1, 2017, the law continues to apply to the right.

