

ASSEMBLY BILL NO. 286—ASSEMBLYMEN
FRIERSON AND BACKUS

MARCH 18, 2019

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to trusts and estates.
(BDR 2-1028)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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 personal financial administration; revising provisions relating to the statutory rule against perpetuities; clarifying certain provisions relating to nonprobate transfer of property upon death; providing that certain sums derived from the sale of a homestead are exempt from the execution of a judgment; revising provisions that govern the transfer of community property or separate property into a trust; revising certain provisions that govern wills and estates of deceased persons; revising certain provisions of the Uniform Powers of Appointment Act; revising certain provisions that govern trusts and the administration of trusts; revising certain provisions that govern spendthrift trusts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the Uniform Statutory Rule Against Perpetuities. (NRS 111.103-111.1039) This rule provides that a property interest which has not vested is invalid unless: (1) when the property interest is created, it is certain to vest or terminate no later than 21 years after the death of a person who is alive when the interest is created; or (2) the property interest either vests or terminates within 365 years after its creation. (NRS 111.1031) Existing law further provides that if language in a governing instrument for a trust or other property arrangement seeks to disallow or postpone the vesting or termination of any interest or trust beyond or until the later of the expiration of a period of time not exceeding or that exceeds or might exceed 21 years after the death of certain persons, such language is inoperative to the extent that it produces a period of time that exceeds 21 years after



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the death of certain persons. (NRS 111.1031) **Section 4** of this bill removes this limitation on a governing instrument for a trust or other property.

Article 15, section 4 of the Nevada Constitution provides that “[n]o perpetuities shall be allowed except for eleemosynary purposes.” According to the Nevada Supreme Court, “ ‘eleemosynary’ is synonymous with ‘charitable,’ . . . (Nixon v. Brown, 46 Nev. 439, 457 (1923)) The constitutional provision against perpetuities is directed at private trusts and not at public or charitable trusts.” *Id.* Existing law provides exclusions to which the statutory rule against perpetuities does not apply. (NRS 111.1037) **Section 5** of this bill provides that the statutory rule against perpetuities does not apply to a property interest in or a power of appointment with respect to certain trusts or other property arrangements that were established for eleemosynary purposes.

Existing law sets forth various provisions governing nonprobate transfer of property upon death. (NRS 111.700-111.815) Existing law provides that a creditor has no claim against property transferred according to a power of appointment that was exercised by a decedent unless it was exercisable in favor of the decedent or the decedent’s estate. (NRS 111.779) **Section 6** of this bill provides that a creditor has no claim against property transferred according to a power of appointment that was exercised by a decedent unless the power of appointment was actually exercised in favor of the decedent or the decedent’s estate.

Existing law provides that a homestead is not subject to forced sale on execution or any final process from any court, subject to certain exceptions. Existing law further provides that this exemption for homesteads extends only to the amount of equity in the property which does not exceed \$550,000 in value. (NRS 115.010) Existing law defines “homestead” to mean the property consisting of: (1) a quantity of land, together with the dwelling house and its appurtenances; (2) a mobile home; or (3) a unit existing in a common-interest community or a condominium project. (NRS 115.005) Existing law provides that if the equity in the homestead exceeds the sum of \$550,000, the judge shall determine whether the property can be divided so as to leave the property subject to the homestead exemption without material injury. If such division cannot occur, existing law requires: (1) the judge to order the entire property to be sold; and (2) that, from the proceeds of such a sale, the sum of \$550,000 must be paid to the defendant in execution, with certain rules applying when the execution is against a spouse. (NRS 115.050) **Section 7** of this bill provides that if the sum of \$550,000 is paid to the defendant in execution or to a spouse, then the sum of \$550,000 possesses all the protections that the original homestead possessed. Existing law provides that the homestead is exempt from execution of a judgment. (NRS 21.090) **Section 2** of this bill provides that the sum of \$550,000 that is paid to the defendant or spouse is also exempt from execution of a judgment. **Sections 1 and 3** of this bill make conforming changes.

Existing law authorizes a trust instrument to provide that community property or separate property transferred into an irrevocable trust of which both spouses are current permissible beneficiaries remains community property or separate property, as applicable, during the marriage. (NRS 123.125) **Section 8** of this bill provides that, except as otherwise provided in a trust instrument or certain other instruments, community property or separate property transferred into a revocable or an irrevocable trust of which both spouses are current permissible beneficiaries remains community property or separate property, as applicable, during the marriage. **Section 9** of this bill makes a conforming change. **Section 8** further authorizes a spouse to transfer his or her interest in community property into a separate trust but prohibits such a spouse from encumbering, pledging, transferring or otherwise distributing the interest in community property while the other spouse is alive without the written consent of the spouse. The Nevada Supreme Court found that “[t]ransmutation from separate to community property must be shown by



clear and convincing evidence.” (*Sprenger v. Sprenger*, 110 Nev. 855, 858 (1994)) **Section 8** incorporates this standard by requiring a spouse or party to a case to establish by clear and convincing evidence the transmutation of community property or separate property that is transferred into a trust into separate property or community property, as applicable.

Existing law provides that kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance comes to the decedent from an ancestor, in which case those who are not of the blood of the ancestor are excluded from the inheritance. (NRS 134.160) **Section 10** of this bill provides that kindred of the half blood inherit equally with those of the whole blood in the same degree.

Existing law grants exclusive jurisdiction of the settlement of an estate to the district court in the county where the decedent was a resident at the time of death. Existing law provides that the estate of a nonresident decedent may be settled by the district court of any county in which part of the estate is located. (NRS 136.010) **Section 11** of this bill provides that the estate of a decedent may be settled by the district court of any county in which any part of the estate is located or where the decedent was a resident at the time of death. **Section 11** further provides that if the decedent was a resident of this State at his or her time of death, the district court of any county in this State may assume jurisdiction of the settlement of the estate only after considering the convenience of the forum to certain parties. **Section 11** additionally provides that after a properly noticed hearing is held, the district court that first assumes jurisdiction of the settlement of an estate has exclusive jurisdiction of the settlement of that estate. Existing law requires a petition for the probate of a will and issuance of letters to state certain facts and information. (NRS 136.090) **Section 12** of this bill requires such a petition to state how the district court in which the petition is being filed is a convenient forum to certain parties.

Existing law sets forth the procedure for petitioning for probate and proving a lost or destroyed will by using a copy of such a lost or destroyed will or a statement of the testamentary words. Existing law further provides that the production of a person’s lost or destroyed will, whose primary beneficiary is a certain nontestamentary trust, creates a rebuttable presumption that the will had not been revoked. (NRS 136.240) **Section 13** of this bill provides that the production of a copy of a person’s lost or destroyed will, whose provisions are clearly and distinctly proved by two or more credible witnesses, creates a rebuttable presumption that the will had not been revoked. **Section 13** further provides that a person may overcome these presumptions only by proving by a preponderance of the evidence that the person whose will it is claimed to be destroyed the will with the intent to revoke the will before his or her death.

Existing law provides for the enforcement of a no-contest clause in a will or trust. (NRS 137.005, 163.00195) **Sections 14 and 23** of this bill provide, with certain exceptions, that a no-contest clause in a will or trust must be enforced by a court according to the terms expressly stated in the no-contest clause. **Sections 14 and 23** expand the number of exceptions to enforcing a no-contest clause in a will or trust.

Existing law authorizes a court, by temporary order, to: (1) restrain a personal representative or a trustee from performing certain acts; or (2) enter any other order to secure proper performance of the duties of the office. Any temporary order entered by a court must be set for hearing within 10 days after entry of the temporary order and notice must be given to the personal representative or trustee. (NRS 143.165, 163.115) **Sections 15 and 22** of this bill authorize a court to enter an ex parte order: (1) restraining a personal representative or a trustee from performing certain acts; or (2) enter any other order to secure proper performance of the duties of the office that is effective until further order of the court. **Sections 15 and 22** authorize a court to impose a fine on an interested person or a



beneficiary who obtains an ex parte order without probable cause and further authorize the court to terminate an ex parte order in certain circumstances. **Sections 25 and 27-31** of this bill make conforming changes.

After the filing of the inventory of an estate, existing law: (1) authorizes a court to set apart for the use of the surviving spouse, minor child or minor children of the decedent all of the personal property which is exempt by law from execution; and (2) requires a court to set apart the homestead. Such property set apart by a court is not subject to administration of the estate. (NRS 146.020) **Section 16** of this bill removes the provision that such setting apart must happen after the filing of the inventory of the estate. If, after setting apart the property, the remaining assets of the estate do not exceed \$100,000 and may be set aside without administration, **section 16** requires the court to follow the procedure used to set aside the remaining assets of the estate without administration. If, after setting apart the property, the remaining assets of the estate exceed \$100,000 and may not be set aside without administration, **section 16** requires the court to administer the remaining assets of the estate as if the remaining assets of the estate are the only assets of the estate.

During the 2017 Legislative Session, the Nevada Legislature adopted the Uniform Powers of Appointment Act. (Chapter 162B of NRS) **Sections 17-21** of this bill revise certain provisions of the Act.

Existing law provides that, unless the terms of the instrument creating a power of appointment manifest a contrary intent, the creation, revocation or amendment of the power and the exercise, release or disclaimer of the power is governed by the law of the donor's or powerholder's domicile at the relevant time. (NRS 162B.105) **Section 17** of this bill provides that, unless the terms of the instrument creating a power of appointment manifest a contrary intent, the creation, revocation or amendment of the power and the exercise, release or disclaimer of the power is governed by: (1) the governing law adopted by the instrument; or (2) the law of the donor's or powerholder's domicile at the relevant time.

Existing law provides that a power of appointment is created only if the instrument creating the power: (1) is valid under applicable law; and (2) except in certain situations, transfers the appointive property. (NRS 162B.200) **Section 18** of this bill removes the requirement that the instrument creating the power must transfer the appointive property.

Existing law authorizes a powerholder of a nongeneral power, unless the terms of the instrument creating a power of appointment manifest a contrary intent, to create a general power in a permissible appointee. (NRS 162B.320) **Section 19** of this bill authorizes a powerholder of a nongeneral power, unless the terms of the instrument creating a power of appointment manifest a contrary intent, to create a general power or a nongeneral power in a permissible appointee.

Existing law authorizes a powerholder to revoke or amend an exercise of a power of appointment only in certain situations. (NRS 162B.365) **Section 20** of this bill authorizes a powerholder to revoke or amend an exercise of a power appointment unless expressly prohibited by the instrument.

Existing law provides that appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of certain creditors. (NRS 162B.510) **Section 21** of this bill provides that such appointive property is not subject to a claim of any creditor, unless the property was exercisable in favor of the decedent or the decedent's estate.

Existing law provides that a trust is irrevocable by the settlor except to the extent that a right to amend or a right to revoke the trust is expressly reserved by the settlor. (NRS 163.004) **Section 24** of this bill provides that, in addition to situations where a settlor reserves a right of revocation, one or more other persons may amend or revoke a trust if such a right is granted to such persons under the terms of the trust instrument.



Existing law authorizes a beneficiary or cotrustee to maintain a proceeding if a trustee commits or threatens to commit a breach of trust. (NRS 163.115) **Section 26** of this bill authorizes a settlor, cotrustee or beneficiary of a trust or a court, on its own initiative, to request a court to remove a trustee in certain circumstances. **Section 26** further authorizes the court to order that a settlor, cotrustee or beneficiary of a trust who institutes a proceeding against a trustee without good faith and not based on probable cause pay all or any part of the costs of the proceeding, including reasonable attorney's fees.

Existing law sets forth the circumstances under which a trustee may appoint property of one trust to a second trust. Existing law prohibits a trustee from appointing property of the original trust to a second trust in certain circumstances, including where property held for the benefit of one or more beneficiaries under both the original and second trust has a lower value than the value of the property held for the benefit of such beneficiaries under only the original trust. (NRS 163.556) **Section 32** of this bill removes this prohibition.

Existing law authorizes a trust to refer to a written statement or list to dispose of items of tangible personal property not otherwise disposed of by the trust. Existing law prohibits such a statement or list from disposing of money, evidences of indebtedness, documents of title, securities and property used in a trade or business. (NRS 163.590) **Section 33** of this bill authorizes such a statement or list to dispose of items of trust property not otherwise specifically disposed of by the trust. **Section 33** further provides that such a statement or list may be used to dispose of all items of trust property, regardless of whether the trust property is real or personal property or tangible or intangible property. **Section 33** authorizes the trust instrument to limit the use of such statement or list to: (1) only dispose of tangible personal property; or (2) prevent the statement or list from being used to dispose of certain types of property.

Senate Bill No. 484 of the 78th Legislative Session replaced the term "excluded fiduciary" with "directed fiduciary." (Chapter 524, Statutes of Nevada 2015, p. 3518) Existing law still defines "excluded fiduciary" although this term has been replaced. (NRS 163.5539) **Section 47** of this bill repeals the definition for "excluded fiduciary." **Section 46** of this bill makes a conforming change.

Existing law sets forth various requirements for the expenses and compensation of a trustee of a testamentary trust. (NRS 153.070) **Section 34** of this bill adds similar requirements for the expenses and compensation of a trustee of a nontestamentary trust.

Existing law authorizes the trustee of a nontestamentary trust, after the death of the settlor of the trust, to publish a notice and mail a copy of the notice to known or readily ascertainable creditors. Such a notice must comply with the format provided in existing law. (NRS 164.025) **Section 35** of this bill creates an additional format for such a notice for a claim against a settlor.

Existing law authorizes virtual representation in the administration of trusts. Under existing law, certain persons may be represented by another person who has a substantially similar interest with respect to the question or dispute. (NRS 164.038) **Section 36** of this bill authorizes a powerholder of a power of appointment to represent and bind a person who is a permissible appointee or a taker in default of appointment.

Existing law sets forth that the laws of this State govern the validity and construction of a trust in certain situations. Existing law further prohibits a trust instrument or designation from extending the duration of the trust beyond the rule against perpetuities that is otherwise applicable to the trust at the time of its creation. (NRS 164.045) **Section 37** of this bill removes this prohibition.

Existing law provides that a provision in a will or trust instrument requiring the arbitration of certain disputes between or among certain parties is enforceable. (NRS 164.930) Existing law requires an agreement, including an agreement



requiring a person to submit to arbitration of any dispute arising between the parties to the agreement, to include a provision indicating that the person has affirmatively agreed to the arbitration requirement. (NRS 597.995) **Section 38** of this bill clarifies that this affirmative agreement to arbitration requirement does not apply to an arbitration provision in a will or trust. **Section 45** of this bill makes a conforming change.

Existing law authorizes the terms of a trust instrument to expand, restrict, eliminate or otherwise vary the rights and interests of beneficiaries in certain manners that are not illegal or against public policy. (NRS 165.160) **Section 47** of this bill repeals this existing law.

Existing law sets forth the restraints on alienation for a spendthrift trust. (NRS 166.120) **Section 43** of this bill provides that such restraints on alienation are a restriction on the transfer of a beneficial interest of the transferor in the trust that is enforceable under applicable nonbankruptcy law under federal bankruptcy law.

Existing law prohibits a person from bringing an action with respect to a transfer of property to a spendthrift trust unless such an action is brought within a certain period of time. (NRS 166.170) **Section 44** of this bill prohibits a person from bringing an action with respect to the validity of a trust or to its qualification as a spendthrift trust unless the action is commenced within 2 years after the trust is created.

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

Section 1. NRS 21.075 is hereby amended to read as follows:

21.075 1. Execution on the writ of execution by levying on the property of the judgment debtor may occur only if the sheriff serves the judgment debtor with a notice of the writ of execution pursuant to NRS 21.076 and a copy of the writ. The notice must describe the types of property exempt from execution and explain the procedure for claiming those exemptions in the manner required in subsection 2. The clerk of the court shall attach the notice to the writ of execution at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION

YOUR PROPERTY IS BEING ATTACHED OR
YOUR WAGES ARE BEING GARNISHED

A court has determined that you owe money to (name of person), the judgment creditor. The judgment creditor has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.



Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.

3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.

5. Payments of benefits under a program of industrial insurance.

6. Payments received as disability, illness or unemployment benefits.

7. Payments received as unemployment compensation.

8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, *including the proceeds from the sale of such property*, not to exceed \$550,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

11. A vehicle, if your equity in the vehicle is less than \$15,000.

12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary or wage was \$770 or less on the date the most recent writ of garnishment was issued, or seventy-five percent of the take-home pay for any workweek if your gross weekly salary or wage exceeded



\$770 on the date the most recent writ of garnishment was issued, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

13. Money, not to exceed \$1,000,000 in present value, held in:

(a) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

(b) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(c) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan that is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

16. Regardless of whether a trust contains a spendthrift provision:



(a) A present or future interest in the income or principal of a trust that is a contingent interest, if the contingency has not been satisfied or removed;

(b) A present or future interest in the income or principal of a trust for which discretionary power is held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;

(c) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;

(d) Certain powers held by a trust protector or certain other persons; and

(e) Any power held by the person who created the trust.

17. If a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a mandatory interest in which the trustee does not have discretion concerning whether to make the distribution from the trust, if the interest has not been distributed from the trust; and

(b) A present or future interest in the income or principal of a trust that is a support interest in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust.

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.



- 1 23. Payments received as restitution for a criminal act.
2 24. Personal property, not to exceed \$10,000 in total
3 value, if the property is not otherwise exempt from execution.
4 25. A tax refund received from the earned income credit
5 provided by federal law or a similar state law.
6 26. Stock of a corporation described in subsection 2 of
7 NRS 78.746 except as set forth in that section.
8 ↳ These exemptions may not apply in certain cases such as a
9 proceeding to enforce a judgment for support of a person or a
10 judgment of foreclosure on a mechanic's lien. You should
11 consult an attorney immediately to assist you in determining
12 whether your property or money is exempt from execution. If
13 you cannot afford an attorney, you may be eligible for
14 assistance through (name of organization in
15 county providing legal services to indigent or elderly
16 persons). If you do not wish to consult an attorney or receive
17 legal services from an organization that provides assistance to
18 persons who qualify, you may obtain the form to be used to
19 claim an exemption from the clerk of the court.
20

21 PROCEDURE FOR CLAIMING EXEMPT PROPERTY

22
23 If you believe that the money or property taken from you
24 is exempt, you must complete and file with the clerk of the
25 court an executed claim of exemption. A copy of the claim of
26 exemption must be served upon the sheriff, the garnishee and
27 the judgment creditor within 10 days after the notice of
28 execution or garnishment is served on you by mail pursuant
29 to NRS 21.076 which identifies the specific property that is
30 being levied on. The property must be released by the
31 garnishee or the sheriff within 9 judicial days after you serve
32 the claim of exemption upon the sheriff, garnishee and
33 judgment creditor, unless the sheriff or garnishee receives a
34 copy of an objection to the claim of exemption and a notice
35 for a hearing to determine the issue of exemption. If this
36 happens, a hearing will be held to determine whether the
37 property or money is exempt. The objection to the claim of
38 exemption and notice for the hearing to determine the issue of
39 exemption must be filed within 8 judicial days after the claim
40 of exemption is served on the judgment creditor by mail or in
41 person and served on the judgment debtor, the sheriff and any
42 garnishee not less than 5 judicial days before the date set for
43 the hearing. The hearing to determine whether the property or
44 money is exempt must be held within 7 judicial days after the
45 objection to the claim of exemption and notice for the hearing



is filed. You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payment, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.

IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

Sec. 2. NRS 21.090 is hereby amended to read as follows:

21.090 1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:

(a) Private libraries, works of art, musical instruments and jewelry not to exceed \$5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor, and all family pictures and keepsakes.

(b) Necessary household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment, not to exceed \$12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor.

(c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by the judgment debtor.

(d) Professional libraries, equipment, supplies, and the tools, inventory, instruments and materials used to carry on the trade or business of the judgment debtor for the support of the judgment debtor and his or her family not to exceed \$10,000 in value.

(e) The cabin or dwelling of a miner or prospector, the miner's or prospector's cars, implements and appliances necessary for carrying on any mining operations and the mining claim actually worked by the miner or prospector, not exceeding \$4,500 in total value.

(f) Except as otherwise provided in paragraph (p), one vehicle if the judgment debtor's equity does not exceed \$15,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any workweek, 82 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of



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garnishment was issued was \$770 or less, 75 percent of the disposable earnings of a judgment debtor during that week if the gross weekly salary or wage of the judgment debtor on the date the most recent writ of garnishment was issued exceeded \$770, or 50 times the minimum hourly wage prescribed by section 206(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201 et seq., and in effect at the time the earnings are payable, whichever is greater. Except as otherwise provided in paragraphs (o), (s) and (t), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

(1) "Disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor.

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under the laws of this State.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance.

(l) The homestead as provided for by law, including ~~the~~:



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(1) *The sum of \$550,000 that is paid to the defendant in execution pursuant to subsection 2 of NRS 115.050 or to a spouse pursuant to subsection 3 of NRS 115.050; and*

(2) A homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself or herself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$550,000 in value and the dwelling is situated upon lands not owned by the judgment debtor.

(n) All money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his or her primary residence, except that such money is not exempt with respect to a landlord or the landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

(o) All property in this State of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

(p) Any vehicle owned by the judgment debtor for use by the judgment debtor or the judgment debtor's dependent that is equipped or modified to provide mobility for a person with a permanent disability.

(q) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.

(r) Money, not to exceed \$1,000,000 in present value, held in:

(1) An individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A, including, without limitation, an inherited individual retirement arrangement;

(2) A written simplified employee pension plan which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408, including, without limitation, an inherited simplified employee pension plan;

(3) A cash or deferred arrangement plan which is qualified and maintained pursuant to the Internal Revenue Code, including, without limitation, an inherited cash or deferred arrangement plan;

(4) A trust forming part of a stock bonus, pension or profit-sharing plan which is qualified and maintained pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and



(5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

(s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

(t) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(u) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(v) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(x) Payments received as restitution for a criminal act.

(y) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$10,000 in total value, to be selected by the judgment debtor.

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the



1 Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided
2 pursuant to a state law.

3 (bb) Stock of a corporation described in subsection 2 of NRS
4 78.746 except as set forth in that section.

5 (cc) Regardless of whether a trust contains a spendthrift
6 provision:

7 (1) A distribution interest in the trust as defined in NRS
8 163.4155 that is a contingent interest, if the contingency has not
9 been satisfied or removed;

10 (2) A distribution interest in the trust as defined in NRS
11 163.4155 that is a discretionary interest as described in NRS
12 163.4185, if the interest has not been distributed;

13 (3) A power of appointment in the trust as defined in NRS
14 163.4157 regardless of whether the power has been exercised;

15 (4) A power listed in NRS 163.5553 that is held by a trust
16 protector as defined in NRS 163.5547 or any other person regardless
17 of whether the power has been exercised; and

18 (5) A reserved power in the trust as defined in NRS 163.4165
19 regardless of whether the power has been exercised.

20 (dd) If a trust contains a spendthrift provision:

21 (1) A distribution interest in the trust as defined in NRS
22 163.4155 that is a mandatory interest as described in NRS 163.4185,
23 if the interest has not been distributed; and

24 (2) Notwithstanding a beneficiary's right to enforce a support
25 interest, a distribution interest in the trust as defined in NRS
26 163.4155 that is a support interest as described in NRS 163.4185, if
27 the interest has not been distributed.

28 (ee) Proceeds received from a private disability insurance plan.

29 (ff) Money in a trust fund for funeral or burial services pursuant
30 to NRS 689.700.

31 (gg) Compensation that was payable or paid pursuant to
32 chapters 616A to 616D, inclusive, or chapter 617 of NRS as
33 provided in NRS 616C.205.

34 (hh) Unemployment compensation benefits received pursuant to
35 NRS 612.710.

36 (ii) Benefits or refunds payable or paid from the Public
37 Employees' Retirement System pursuant to NRS 286.670.

38 (jj) Money paid or rights existing for vocational rehabilitation
39 pursuant to NRS 615.270.

40 (kk) Public assistance provided through the Department of
41 Health and Human Services pursuant to NRS 422.291 and
42 422A.325.

43 (ll) Child welfare assistance provided pursuant to NRS 432.036.

44 2. Except as otherwise provided in NRS 115.010, no article or
45 species of property mentioned in this section is exempt from



1 execution issued upon a judgment to recover for its price, or upon a
2 judgment of foreclosure of a mortgage or other lien thereon.

3 3. Any exemptions specified in subsection (d) of section 522 of
4 the Bankruptcy Reform Act of 1978, 11 U.S.C. §§ 101 et seq., do
5 not apply to property owned by a resident of this State unless
6 conferred also by subsection 1, as limited by subsection 2.

7 **Sec. 3.** NRS 31.045 is hereby amended to read as follows:

8 31.045 1. Execution on the writ of attachment by attaching
9 property of the defendant may occur only if:

10 (a) The judgment creditor serves the defendant with notice of
11 the execution when the notice of the hearing is served pursuant to
12 NRS 31.013; or

13 (b) Pursuant to an ex parte hearing, the sheriff serves upon the
14 judgment debtor notice of the execution and a copy of the writ at the
15 same time and in the same manner as set forth in NRS 21.076.

16 ➡ If the attachment occurs pursuant to an ex parte hearing, the clerk
17 of the court shall attach the notice to the writ of attachment at the
18 time the writ is issued.

19 2. The notice required pursuant to subsection 1 must be
20 substantially in the following form:

21
22 NOTICE OF EXECUTION

23
24 YOUR PROPERTY IS BEING ATTACHED OR
25 YOUR WAGES ARE BEING GARNISHED
26

27 Plaintiff, (name of person), alleges that you
28 owe the plaintiff money. The plaintiff has begun the
29 procedure to collect that money. To secure satisfaction of
30 judgment, the court has ordered the garnishment of your
31 wages, bank account or other personal property held by third
32 persons or the taking of money or other property in your
33 possession.

34 Certain benefits and property owned by you may be
35 exempt from execution and may not be taken from you. The
36 following is a partial list of exemptions:

37 1. Payments received pursuant to the federal Social
38 Security Act, including, without limitation, retirement and
39 survivors' benefits, supplemental security income benefits
40 and disability insurance benefits.

41 2. Payments for benefits or the return of contributions
42 under the Public Employees' Retirement System.

43 3. Payments for public assistance granted through the
44 Division of Welfare and Supportive Services of the



* A B 2 8 6 *

Department of Health and Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.

5. Payments of benefits under a program of industrial insurance.

6. Payments received as disability, illness or unemployment benefits.

7. Payments received as unemployment compensation.

8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, *including the proceeds from the sale of such property*, not to exceed \$550,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. All money reasonably deposited with a landlord by you to secure an agreement to rent or lease a dwelling that is used by you as your primary residence, except that such money is not exempt with respect to a landlord or the landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

11. A vehicle, if your equity in the vehicle is less than \$15,000.

12. Eighty-two percent of the take-home pay for any workweek if your gross weekly salary or wage on the date the most recent writ of garnishment was issued was \$770 or less, or seventy-five percent of the take-home pay for any workweek if your gross weekly salary or wage on the date the most recent writ of garnishment was issued exceeded \$770, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

13. Money, not to exceed \$500,000 in present value, held in:

(a) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;



(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

(c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

15. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

16. Regardless of whether a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a contingent interest, if the interest has not been satisfied or removed;

(b) A present or future interest in the income or principal of a trust for which discretionary power is held by a trustee to determine whether to make a distribution from the trust, if the interest has not been distributed from the trust;

(c) The power to direct dispositions of property in the trust, other than such a power held by a trustee to distribute property to a beneficiary of the trust;

(d) Certain powers held by a trust protector or certain other persons; and

(e) Any power held by the person who created the trust.

17. If a trust contains a spendthrift provision:

(a) A present or future interest in the income or principal of a trust that is a mandatory interest in which the trustee does not have discretion concerning whether to make the



distribution from the trust, if the interest has not been distributed from the trust; and

(b) A present or future interest in the income or principal of a trust that is a support interest in which the standard for distribution may be interpreted by the trustee or a court, if the interest has not been distributed from the trust.

18. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

19. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

20. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

21. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

22. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

23. Payments received as restitution for a criminal act.

24. Personal property, not to exceed \$1,000 in total value, if the property is not otherwise exempt from execution.

25. A tax refund received from the earned income credit provided by federal law or a similar state law.

26. Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

➔ These exemptions may not apply in certain cases such as proceedings to enforce a judgment for support of a child or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through (name of organization in county providing legal services to the indigent or elderly persons). If you do not wish to consult an attorney or receive legal services from an organization that provides assistance to



persons who qualify, you may obtain the form to be used to claim an exemption from the clerk of the court.

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt or necessary for the support of you or your family, you must file with the clerk of the court on a form provided by the clerk an executed claim of exemption. A copy of the claim of exemption must be served upon the sheriff, the garnishee and the judgment creditor within 10 days after the notice of execution or garnishment is served on you by mail pursuant to NRS 21.076 which identifies the specific property that is being levied on. The property must be released by the garnishee or the sheriff within 9 judicial days after you serve the claim of exemption upon the sheriff, garnishee and judgment creditor, unless the sheriff or garnishee receives a copy of an objection to the claim of exemption and a notice for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The objection to the claim of exemption and notice for the hearing to determine the issue of exemption must be filed within 8 judicial days after the claim of exemption is served on the judgment creditor by mail or in person and served on the judgment debtor, the sheriff and any garnishee not less than 5 judicial days before the date set for the hearing. The hearing must be held within 7 judicial days after the objection to the claim of exemption and notice for a hearing is filed. You may be able to have your property released more quickly if you mail to the judgment creditor or the attorney of the judgment creditor written proof that the property is exempt. Such proof may include, without limitation, a letter from the government, an annual statement from a pension fund, receipts for payment, copies of checks, records from financial institutions or any other document which demonstrates that the money in your account is exempt.

IF YOU DO NOT FILE THE EXECUTED CLAIM OF EXEMPTION WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.



If you received this notice with a notice of a hearing for attachment and you believe that the money or property which would be taken from you by a writ of attachment is exempt or necessary for the support of you or your family, you are entitled to describe to the court at the hearing why you believe your property is exempt. You may also file a motion with the court for a discharge of the writ of attachment. You may make that motion any time before trial. A hearing will be held on that motion.

IF YOU DO NOT FILE THE MOTION BEFORE THE TRIAL, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE PLAINTIFF, EVEN IF THE PROPERTY OR MONEY IS EXEMPT OR NECESSARY FOR THE SUPPORT OF YOU OR YOUR FAMILY.

Sec. 4. NRS 111.1031 is hereby amended to read as follows:

111.1031 1. A nonvested property interest is invalid unless:

(a) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of a natural person then alive; or

(b) The interest either vests or terminates within 365 years after its creation.

2. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of a natural person then alive; or

(b) The condition precedent either is satisfied or becomes impossible to satisfy within 365 years after its creation.

3. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(a) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of a natural person then alive; or

(b) The power is irrevocably exercised or otherwise terminates within 365 years after its creation.

4. In determining whether a nonvested property interest or a power of appointment is valid under paragraph (a) of subsection 1, paragraph (a) of subsection 2 or paragraph (a) of subsection 3, the possibility that a child will be born to a person after his or her death is disregarded.

~~[5.—If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest~~



~~or trust until, or seeks to operate in effect in any similar fashion upon, the later of:~~

~~—(a) The expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or~~

~~—(b) The expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement;~~

~~→ that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.}~~

Sec. 5. NRS 111.1037 is hereby amended to read as follows:

111.1037 NRS 111.1031 does not apply to:

1. A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(a) A premarital or postmarital agreement;

(b) A separation or divorce settlement;

(c) A spouse's election;

(d) A similar arrangement arising out of a prospective, existing or previous marital relationship between the parties;

(e) A contract to make or not to revoke a will or trust;

(f) A contract to exercise or not to exercise a power of appointment;

(g) A transfer in satisfaction of a duty of support; or

(h) A reciprocal transfer;

2. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

3. A power to appoint a fiduciary;

4. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

5. A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

6. A property interest in or a power of appointment with respect to a trust or other property arrangement if such a trust or other property arrangement:

(a) Was established for eleemosynary purposes; and

(b) As set forth in the terms of such trust or other property arrangement, is to continue for an indefinite or unlimited period;



7. A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

~~[7.]~~ 8. A property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or is expressly excluded by another statute of this state.

Sec. 6. NRS 111.779 is hereby amended to read as follows:

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

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

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

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

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

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

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

5. If a nonprobate transferee is a spouse or a minor child, the nonprobate transferee may petition the court to be excluded from the liability imposed by this section as if the nonprobate property received by the spouse or minor child were part of the decedent's estate. Such a petition may be made pursuant to the applicable



provisions of chapter 146 of NRS, including, without limitation, the provisions of NRS 146.010 ~~[, NRS]~~ and 146.020 ~~[without regard to the filing of an inventory]~~ and subsection 2 of NRS 146.070.

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

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

8. If a probate proceeding is pending at the time of filing and it has been determined by a final order issued by the probate court that there are insufficient assets to pay a valid creditor, a proceeding under this section may be commenced by one of the following persons:

(a) The personal representative of the decedent's estate. A personal representative who declines in good faith to commence a proceeding incurs no personal liability for declining.

(b) A creditor of the estate, if the personal representative has declined or refused to commence an action within 30 days after receiving a written demand by a creditor. Such demand must identify the nonprobate transfers known to the creditor. If the creditor is unaware of any nonprobate transfers, in the probate proceeding, the creditor may, pursuant to NRS 155.170, obtain discovery, perpetuate testimony or conduct examinations in any manner authorized by law or by the Nevada Rules of Civil Procedure to ascertain whether any nonprobate transfers exist. If the creditor is unable to identify any nonprobate transfers within a reasonable time after conducting discovery, the creditor may not proceed under this section. If a creditor commences an action under this section:

(1) The creditor must proceed at the expense of the creditor and not of the estate.

(2) If a creditor successfully establishes an entitlement to payment under this section and collects nonprobate transfers, the court must order the reimbursement of the costs reasonably incurred by the creditor, including attorney's fees, from the transferee from whom the payment is to be made, subject to the limitations of subsection 2, or from the estate as a cost of administration, or partially from each, as the court deems just.

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



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

3 (a) If a probate proceeding is pending in which notice to
4 creditors has been given at the time of filing a proceeding under this
5 section:

6 (1) As to a creditor whose claim was properly and timely
7 filed, allowed by the personal representative or partially allowed by
8 the personal representative, and accepted by the creditor pursuant to
9 NRS 147.160, within 60 days after the probate court enters an order
10 confirming the amount of payment of the approved claim that is
11 final and no longer subject to reconsideration or appeal or within 1
12 year after the decedent's death, whichever is later.

13 (2) As to a creditor:

14 (I) Whose claim was rejected by the personal
15 representative, partially allowed by the personal representative and
16 rejected by the creditor pursuant to NRS 147.160, or deemed
17 rejected by the personal representative pursuant to NRS 147.110;

18 (II) Who adjudicated the creditor's claims in the proper
19 court or by a summary adjudication; and

20 (III) Who obtained a favorable final judgment on its claim
21 from the proper court,

22 ↳ within 60 days after the probate court enters an order confirming
23 the amount of payment of the approved claim that is final and no
24 longer subject to reconsideration or appeal or within 1 year after the
25 decedent's death, whichever is later.

26 (b) If an action had been commenced against the decedent
27 before the decedent's death, the creditor receives a judgment against
28 the decedent's estate and the creditor has filed a proper and timely
29 creditor's claim against the estate, within 60 days after the probate
30 court enters an order confirming the amount of payment of the
31 adjudicated claim that is final and no longer subject to
32 reconsideration or appeal or within 1 year after the decedent's death,
33 whichever is later.

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

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

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

42 (a) Payment or delivery of assets by a financial institution,
43 registrar or other obligor to a nonprobate transferee in accordance
44 with the terms of the governing instrument controlling the transfer



1 releases the obligor from all claims for amounts paid or assets
2 delivered.

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

8 12. Except as otherwise provided in subsection 13,
9 notwithstanding any provision of this section to the contrary:

10 (a) A creditor has no claim against:

11 (1) Property transferred pursuant to a power of appointment
12 exercised by a decedent unless ~~it~~ *the power of appointment* was
13 ~~exercisable~~ *actually exercised* in favor of the decedent or the
14 decedent's estate.

15 (2) Property transferred pursuant to a beneficiary designation
16 by a decedent which transfers money held by any of the following:

17 (I) An individual retirement arrangement which conforms
18 with or is maintained pursuant to the applicable limitations and
19 requirements of section 408 or 408A of the Internal Revenue Code,
20 26 U.S.C. §§ 408 and 408A, including, without limitation, an
21 inherited individual retirement arrangement;

22 (II) A written simplified employee pension plan which
23 conforms with or is maintained pursuant to the applicable
24 limitations and requirements of section 408 of the Internal Revenue
25 Code, 26 U.S.C. § 408, including, without limitation, an inherited
26 simplified employee pension plan;

27 (III) A cash or deferred arrangement plan which is
28 qualified and maintained pursuant to the Internal Revenue Code,
29 including, without limitation, an inherited cash or deferred
30 arrangement plan;

31 (IV) A trust forming part of a stock bonus, pension or
32 profit-sharing plan which is qualified and maintained pursuant to
33 sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401
34 et seq.; and

35 (V) A trust forming part of a qualified tuition program
36 pursuant to chapter 353B of NRS, any applicable regulations
37 adopted pursuant to chapter 353B of NRS and section 529 of the
38 Internal Revenue Code, 26 U.S.C. § 529, unless the money is
39 deposited after the entry of a judgment against the purchaser or
40 account owner or the money will not be used by any beneficiary to
41 attend a college or university.

42 (3) Property transferred pursuant to a beneficiary designation
43 by a decedent which transfers money, benefits or privileges that
44 accrue in any manner out of life insurance.



(4) Proceeds of any wages of the decedent which were exempt from execution during the decedent's lifetime pursuant to paragraph (g) of subsection 1 of NRS 21.090.

(5) A trust, a beneficial interest of the decedent under a trust or amount payable from a trust if the trust was created by someone other than the decedent, except to enforce a valid assignment of the decedent's beneficial interest under a trust that is not a spendthrift trust.

(6) An irrevocable trust or amounts payable from a trust if the trust was properly created as a valid spendthrift trust under chapter 166 of NRS, except with respect to property transferred to the trust by the decedent to the extent permitted under subsections ~~1, 2 and 3~~ 2, 3 and 4 of NRS 166.170.

(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. Nothing in this section exempts any real or personal property from any statute of this State that authorizes the recovery of money owed to the Department of Health and Human Services as a result of the payment of benefits from Medicaid.

14. As used in this section, "devise" has the meaning ascribed to it in NRS 132.095.

Sec. 7. NRS 115.050 is hereby amended to read as follows:

115.050 1. Whenever execution has been issued against the property of a party claiming the property as a homestead, and the creditor in the judgment makes an oath before the judge of the district court of the county in which the property is situated that the amount of equity held by the claimant in the property exceeds, to the best of the creditor's information and belief, the sum of \$550,000, the judge shall, upon notice to the debtor, appoint three disinterested and competent persons as appraisers to estimate and report as to the amount of equity held by the claimant in the property and, if the amount of equity exceeds the sum of \$550,000,



1 determine whether the property can be divided so as to leave the
2 property subject to the homestead exemption without material
3 injury.

4 2. If it appears, upon the report, to the satisfaction of the judge
5 that the property can be thus divided, the judge shall order the
6 excess to be sold under execution. If it appears that the property
7 cannot be thus divided, and the amount of equity held by the
8 claimant in the property exceeds the exemption allowed by this
9 chapter, the judge shall order the entire property to be sold, and out
10 of the proceeds the sum of \$550,000 to be paid to the defendant in
11 execution, and the excess to be applied to the satisfaction on the
12 execution. No bid under \$550,000 may be received by the officer
13 making the sale.

14 3. When the execution is against a spouse, the judge may direct
15 the \$550,000 to be deposited in court, to be paid out only upon the
16 joint receipt of both spouses, and the deposit possesses all the
17 protection against legal process and voluntary disposition by either
18 spouse as did the original homestead.

19 *4. If the sum of \$550,000 is paid to the defendant in*
20 *execution pursuant to subsection 2 or to a spouse pursuant to*
21 *subsection 3, such sum of \$550,000 possesses all the protection*
22 *against legal process and voluntary disposition by the defendant or*
23 *spouse as did the original homestead.*

24 **Sec. 8.** NRS 123.125 is hereby amended to read as follows:

25 123.125 1. ~~[A]~~ *Except as otherwise provided in subsection 3*
26 *or in a trust instrument ~~[may provide that]~~ or other instrument that*
27 *is in writing and signed by both spouses,* community property or
28 separate property transferred into *a revocable or* an irrevocable trust
29 of which both spouses are current permissible beneficiaries remains
30 community property or separate property, as applicable, during the
31 marriage. Any community property or separate property, including,
32 without limitation, any income, appreciation and proceeds thereof,
33 that is distributed or withdrawn from a trust instrument containing
34 such a provision remains community property or separate property,
35 as applicable.

36 2. *Subject to the provisions of this subsection, a spouse may*
37 *transfer his or her interest in community property into a separate*
38 *trust by deed, conveyance, assignment or other instrument that is*
39 *in writing and signed by both spouses. Until the death of the other*
40 *spouse, a spouse or a trustee of a trust containing the interest in*
41 *community property of the spouse shall not encumber, pledge,*
42 *transfer or otherwise distribute the interest in community property*
43 *of the spouse without the written consent of the other spouse.*

44 3. *A spouse or other party in a case must establish by clear*
45 *and convincing evidence the transmutation of community property*



or separate property that is transferred into a trust from, as applicable:

(a) Community property to separate property; or

(b) Separate property to community property.

4. The provisions of this section do not affect the character of community property or separate property that is transferred into a trust in any manner other than as described in this section.

Sec. 9. NRS 125.150 is hereby amended to read as follows:

125.150 Except as otherwise provided in NRS 125.155 and 125.165, and unless the action is contrary to a premarital agreement between the parties which is enforceable pursuant to chapter 123A of NRS:

1. In granting a divorce, the court:

(a) May award such alimony to either spouse, in a specified principal sum or as specified periodic payments, as appears just and equitable; and

(b) Shall, to the extent practicable, make an equal disposition of the community property of the parties, including, without limitation, any community property transferred into *a revocable or* irrevocable trust pursuant to NRS 123.125 over which the court acquires jurisdiction pursuant to NRS 164.010, except that the court may make an unequal disposition of the community property in such proportions as it deems just if the court finds a compelling reason to do so and sets forth in writing the reasons for making the unequal disposition.

2. Except as otherwise provided in this subsection, in granting a divorce, the court shall dispose of any property held in joint tenancy in the manner set forth in subsection 1 for the disposition of community property. If a party has made a contribution of separate property to the acquisition or improvement of property held in joint tenancy, the court may provide for the reimbursement of that party for his or her contribution. The amount of reimbursement must not exceed the amount of the contribution of separate property that can be traced to the acquisition or improvement of property held in joint tenancy, without interest or any adjustment because of an increase in the value of the property held in joint tenancy. The amount of reimbursement must not exceed the value, at the time of the disposition, of the property held in joint tenancy for which the contribution of separate property was made. In determining whether to provide for the reimbursement, in whole or in part, of a party who has contributed separate property, the court shall consider:

(a) The intention of the parties in placing the property in joint tenancy;

(b) The length of the marriage; and



(c) Any other factor which the court deems relevant in making a just and equitable disposition of that property.

➤ As used in this subsection, "contribution" includes, without limitation, a down payment, a payment for the acquisition or improvement of property, and a payment reducing the principal of a loan used to finance the purchase or improvement of property. The term does not include a payment of interest on a loan used to finance the purchase or improvement of property, or a payment made for maintenance, insurance or taxes on property.

3. A party may file a postjudgment motion in any action for divorce, annulment or separate maintenance to obtain adjudication of any community property or liability omitted from the decree or judgment as the result of fraud or mistake. A motion pursuant to this subsection must be filed within 3 years after the discovery by the aggrieved party of the facts constituting the fraud or mistake. The court has continuing jurisdiction to hear such a motion and shall equally divide the omitted community property or liability between the parties unless the court finds that:

(a) The community property or liability was included in a prior equal disposition of the community property of the parties or in an unequal disposition of the community property of the parties which was made pursuant to written findings of a compelling reason for making that unequal disposition; or

(b) The court determines a compelling reason in the interests of justice to make an unequal disposition of the community property or liability and sets forth in writing the reasons for making the unequal disposition.

➤ If a motion pursuant to this subsection results in a judgment dividing a defined benefit pension plan, the judgment may not be enforced against an installment payment made by the plan more than 6 years after the installment payment.

4. Except as otherwise provided in NRS 125.141, whether or not application for suit money has been made under the provisions of NRS 125.040, the court may award a reasonable attorney's fee to either party to an action for divorce.

5. In granting a divorce, the court may also set apart such portion of the separate property of either spouse for the other spouse's support or the separate property of either spouse for the support of their children as is deemed just and equitable.

6. In the event of the death of either party or the subsequent remarriage of the spouse to whom specified periodic payments were to be made, all the payments required by the decree must cease, unless it was otherwise ordered by the court.

7. If the court adjudicates the property rights of the parties, or an agreement by the parties settling their property rights has been



1 approved by the court, whether or not the court has retained
2 jurisdiction to modify them, the adjudication of property rights, and
3 the agreements settling property rights, may nevertheless at any time
4 thereafter be modified by the court upon written stipulation signed
5 and acknowledged by the parties to the action, and in accordance
6 with the terms thereof.

7 8. If a decree of divorce, or an agreement between the parties
8 which was ratified, adopted or approved in a decree of divorce,
9 provides for specified periodic payments of alimony, the decree or
10 agreement is not subject to modification by the court as to accrued
11 payments. Payments pursuant to a decree entered on or after July 1,
12 1975, which have not accrued at the time a motion for modification
13 is filed may be modified upon a showing of changed circumstances,
14 whether or not the court has expressly retained jurisdiction for the
15 modification. In addition to any other factors the court considers
16 relevant in determining whether to modify the order, the court shall
17 consider whether the income of the spouse who is ordered to pay
18 alimony, as indicated on the spouse's federal income tax return for
19 the preceding calendar year, has been reduced to such a level that
20 the spouse is financially unable to pay the amount of alimony the
21 spouse has been ordered to pay.

22 9. In addition to any other factors the court considers relevant
23 in determining whether to award alimony and the amount of such an
24 award, the court shall consider:

- 25 (a) The financial condition of each spouse;
- 26 (b) The nature and value of the respective property of each
27 spouse;
- 28 (c) The contribution of each spouse to any property held by the
29 spouses pursuant to NRS 123.030;
- 30 (d) The duration of the marriage;
- 31 (e) The income, earning capacity, age and health of each spouse;
- 32 (f) The standard of living during the marriage;
- 33 (g) The career before the marriage of the spouse who would
34 receive the alimony;
- 35 (h) The existence of specialized education or training or the
36 level of marketable skills attained by each spouse during the
37 marriage;
- 38 (i) The contribution of either spouse as homemaker;
- 39 (j) The award of property granted by the court in the divorce,
40 other than child support and alimony, to the spouse who would
41 receive the alimony; and
- 42 (k) The physical and mental condition of each party as it relates
43 to the financial condition, health and ability to work of that spouse.

44 10. In granting a divorce, the court shall consider the need to
45 grant alimony to a spouse for the purpose of obtaining training or



1 education relating to a job, career or profession. In addition to any
2 other factors the court considers relevant in determining whether
3 such alimony should be granted, the court shall consider:

4 (a) Whether the spouse who would pay such alimony has
5 obtained greater job skills or education during the marriage; and

6 (b) Whether the spouse who would receive such alimony
7 provided financial support while the other spouse obtained job skills
8 or education.

9 11. If the court determines that alimony should be awarded
10 pursuant to the provisions of subsection 10:

11 (a) The court, in its order, shall provide for the time within
12 which the spouse who is the recipient of the alimony must
13 commence the training or education relating to a job, career or
14 profession.

15 (b) The spouse who is ordered to pay the alimony may, upon
16 changed circumstances, file a motion to modify the order.

17 (c) The spouse who is the recipient of the alimony may be
18 granted, in addition to any other alimony granted by the court,
19 money to provide for:

20 (1) Testing of the recipient's skills relating to a job, career or
21 profession;

22 (2) Evaluation of the recipient's abilities and goals relating to
23 a job, career or profession;

24 (3) Guidance for the recipient in establishing a specific plan
25 for training or education relating to a job, career or profession;

26 (4) Subsidization of an employer's costs incurred in training
27 the recipient;

28 (5) Assisting the recipient to search for a job; or

29 (6) Payment of the costs of tuition, books and fees for:

30 (I) The equivalent of a high school diploma;

31 (II) College courses which are directly applicable to the
32 recipient's goals for his or her career; or

33 (III) Courses of training in skills desirable for
34 employment.

35 12. For the purposes of this section, a change of 20 percent or
36 more in the gross monthly income of a spouse who is ordered to pay
37 alimony shall be deemed to constitute changed circumstances
38 requiring a review for modification of the payments of alimony. As
39 used in this subsection, "gross monthly income" has the meaning
40 ascribed to it in NRS 125B.070.

41 **Sec. 10.** NRS 134.160 is hereby amended to read as follows:

42 134.160 Kindred of the half blood inherit equally with those of
43 the whole blood in the same degree. ~~[-, unless the inheritance comes~~
44 ~~to the decedent by descent or devise from an ancestor, in which case~~



~~all those who are not of the blood of the ancestor are excluded from the inheritance.]~~

Sec. 11. NRS 136.010 is hereby amended to read as follows:

136.010 1. ~~[Wills may be proved and letters granted in the county where the decedent was a resident at the time of death, whether death occurred in that county or elsewhere, and the district court of that county has exclusive jurisdiction of the settlement of such estates, whether the estate is in one or more counties.~~

~~—2.]~~ The estate of a ~~[nonresident]~~ decedent may be settled by the district court of any county in *this State*:

(a) *In* which any part of the estate is located ~~[-The]~~ ; or

(b) *Where the decedent was a resident at the time of death.*

2. *If the decedent was a resident of this State at the time of death, the district court of any county in this State, whether death occurred in that county or elsewhere, may assume jurisdiction of the settlement of the estate of the decedent only after taking into consideration the convenience of the forum to:*

(a) *The person named as personal representative or trustee in the will; and*

(b) *The heirs, devisees, interested persons or beneficiaries to the decedent or estate and their legal counsel.*

3. *After a properly noticed hearing is held, the district court* ~~[to which application is first made]~~ *that first assumes jurisdiction of the settlement of an estate* has exclusive jurisdiction of the settlement of ~~[estates of nonresidents.]~~ *that estate, including, without limitation:*

(a) *The proving of wills;*

(b) *The granting of letters; and*

(c) *The administration of the estate.*

Sec. 12. NRS 136.090 is hereby amended to read as follows:

136.090 1. A petition for the probate of a will and issuance of letters must state:

(a) The jurisdictional facts;

(b) Whether the person named as personal representative consents to act or renounces the right to letters;

(c) The names and residences of the heirs, next of kin and devisees of the decedent, the age of any heir, next of kin or devisee who is a minor, and the relationship of the heirs and next of kin to the decedent, so far as known to the petitioner;

(d) The character and estimated value of the property of the estate;

(e) The name of the person for whom letters are requested, and whether the person has been convicted of a felony; ~~[and]~~

(f) The name of any devisee who is deceased ~~[.]~~ ; and



(g) *How the district court in which the petition is being filed a convenient forum to:*

(1) *The person named as personal representative or trustee in the will; and*

(2) *The heirs, devisees, interested persons or beneficiaries to the decedent or estate and their legal counsel.*

2. No defect of form or in the statement of jurisdictional facts actually existing voids the probate of a will.

Sec. 13. NRS 136.240 is hereby amended to read as follows:

136.240 1. The petition for the probate of a lost or destroyed will must include a copy of the will, or if no copy is available state, or be accompanied by a written statement of, the testamentary words, or the substance thereof.

2. If offered for probate, a lost or destroyed will must be proved in the same manner as other wills are proved under this chapter.

3. In addition, no will may be proved as a lost or destroyed will unless its provisions are clearly and distinctly proved by two or more credible witnesses and it is:

(a) Proved to have been in legal existence at the death of the person whose will it is claimed to be and has not otherwise been revoked or destroyed without the knowledge, consent or ratification of such person; or

(b) Shown to have been fraudulently destroyed in the lifetime of that person.

4. The testimony of each witness must be reduced to writing, signed by the witness and filed, and is admissible in evidence in any contest of the will if the witness has died or permanently moved from the State.

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

(a) The production of a person's lost or destroyed will, whose primary beneficiary is a nontestamentary trust established by the person and in existence at his or her death, creates a rebuttable presumption that the will had not been revoked.

(b) ~~HH~~ *The production of a copy of a person's lost or destroyed will, whose provisions are clearly and distinctly proved by two or more credible witnesses, creates a rebuttable presumption that the will had not been revoked.*

(c) *A person may overcome the presumption set forth in paragraph (a) or (b) only by proving by a preponderance of the evidence that the person whose will it is claimed to be destroyed the will with the intent to revoke the will before his or her death. In the absence of such evidence:*



(1) *The lost or destroyed will must be admitted to probate; and*

(2) *The court shall accept a copy of such a will as sufficient proof of the terms thereof without requiring further evidence.*

(d) *For a lost or destroyed will to which the presumption set forth in paragraph (a) or (b) does not apply, if* the proponent of a lost or destroyed will makes a prima facie showing that it was more likely than not left unrevoked by the person whose will it is claimed to be before his or her death, then the will must be admitted to probate in absence of an objection. If such prima facie showing has been made, the court shall accept a copy of such a will as sufficient proof of the terms thereof without requiring further evidence in the absence of any objection.

6. If the will is established, its provisions must be set forth specifically in the order admitting it to probate, or a copy of the will must be attached to the order.

Sec. 14. NRS 137.005 is hereby amended to read as follows:

137.005 1. Except as otherwise provided in ~~{subsections 3 and}~~ *subsection 4, a no-contest clause in a will must be enforced, to the greatest extent possible, by the court according to the terms expressly stated in the no-contest clause without regard to the presence or absence of probable cause for, or the good faith or bad faith of the devisee in, taking the action prohibited by the no-contest clause. A no-contest clause* in a will must be enforced by the court because public policy favors enforcing the intent of the testator. ~~[However, because public policy does not favor forfeitures, a no-contest clause must be strictly construed by the court and must not be extended beyond the plain meaning of the express provisions of the will.]~~

2. ~~[A no-contest clause must be construed to carry out the testator's intent to the extent such intent is clear and unambiguous.]~~ No extrinsic evidence is admissible to establish the testator's intent concerning the no-contest clause ~~[]~~ *to the extent such intent is clear and unambiguous.* The provisions of this subsection do not prohibit extrinsic evidence from being admitted for any other purpose authorized by law.

3. Except as otherwise provided in ~~{subsections 3 and}~~ *subsection 4, a devisee's share may be reduced or eliminated under a no-contest clause based upon conduct that is set forth by the testator in the will, including, without limitation, any testamentary trust established in the will. Such conduct may include, without limitation:*

(a) Conduct other than formal court action; and

(b) Conduct which is unrelated to the will itself, including, without limitation:



(1) The commencement of civil litigation against the testator's probate estate or family members;

(2) Interference with the administration of a trust or a business entity;

(3) Efforts to frustrate the intent of the testator's power of attorney; and

(4) Efforts to frustrate the designation of beneficiaries related to a nonprobate transfer by the testator.

~~3.] 4. Notwithstanding any provision to the contrary in the will, a no-contest clause in a will must not be enforced by a court and a devisee's share must not be reduced or eliminated under a no-contest clause in a will because : [of any action taken by the devisee seeking only to:]~~

(a) *A devisee acts to:*

(1) Enforce the *clear and unambiguous* terms of the will or any document referenced in or affected by the will;

~~[(b)]~~ (2) Enforce the ~~[devisee's]~~ legal rights *of the devisee that provide the devisee standing* in the probate proceeding;

~~[(e)]~~ (3) Obtain court instruction with respect to the proper administration of the estate or the construction or legal effect of the will or the provisions thereof; or

~~[(d)]~~ (4) Enforce the fiduciary duties of the personal representative.

~~[4.—Notwithstanding any provision to the contrary in the will, a devisee's share must not be reduced or eliminated under a no-contest clause because the devisee institutes legal action seeking to invalidate a will if the legal action is instituted and maintained in good faith and based on probable cause that would have led a reasonable person, properly informed and advised, to]~~

(b) *The court determines by clear and convincing evidence that the conduct of the devisee was:*

(1) *A product of coercion or undue influence; or*

(2) *Caused by the lack of sufficient mental capacity to knowingly engage in the conduct.*

(c) *A devisee or any other interested person enters into an agreement to settle a dispute or resolve any other matter relating to the will.*

(d) *A devisee institutes legal action seeking to invalidate a will if the legal action is instituted and maintained in good faith and based on probable cause. For the purposes of this paragraph, legal action is based on probable cause where, based upon the facts and circumstances available to the devisee who commences such legal action, a reasonable person, properly informed and advised, would conclude that the will is invalid.*



5. As to any testamentary trust, the testator is the settlor. Unless the will expressly provides otherwise, a no-contest clause in a will applies to a testamentary trust created under that will and the provisions of NRS 163.00195 apply to that trust.

6. Where a devisee takes action, asserts a cause of action or asserts a request for relief and such action or assertion violates a no-contest clause in a will, this section must not prevent the enforcement of the no-contest clause unless the action, cause of action or request for relief claims one of the exceptions to enforcement set forth in subsection 4.

7. Except as otherwise provided in subsection 4, subject to the discretion of the personal representative, as applicable:

(a) A personal representative may suspend distributions to a devisee to the extent that, under a no-contest provision, the conduct of the devisee may cause the reduction or elimination of the interest of the devisee in the trust.

(b) Until a court determines whether the interest of the devisee in the will has been reduced or eliminated, a personal representative may:

(1) Resume distributions that were suspended pursuant to paragraph (a) at any time; or

(2) Continue to suspend those distributions.

(c) To the extent that a devisee has received distributions prior to engaging in conduct that potentially would have caused the reduction or elimination of the interest of the devisee in the will under a no-contest clause, a personal representative may seek reimbursement from the devisee or may offset those distributions.

8. A no-contest clause in a will applies to a codicil even if the no-contest clause was not expressly incorporated in the codicil.

9. As used in this section, "no-contest clause" means one or more provisions in a will that express a directive to reduce or eliminate the share allocated to a devisee or to reduce or eliminate the distributions to be made to a devisee if the devisee takes action to frustrate or defeat the testator's intent as expressed in the will.

The term does not include:

(a) Provisions in a will that shift or apportion attorney's fees and costs incurred by the estate against the share allocated to a devisee who has asserted an unsuccessful claim, defense or objection;

(b) Provisions in a will that permit a personal representative to delay distributions to a devisee;

(c) Provisions in a will that require the arbitration of disputes involving the will; or

(d) A forum selection clause in the will.



Sec. 15. NRS 143.165 is hereby amended to read as follows:

143.165 1. On petition or ex parte application of an interested person, the court , ~~{by temporary order,}~~ with or without bond, may ~~{restrain}~~ *enter an ex parte order restraining* a personal representative from performing specified acts of administration, disbursement or distribution, or exercising any powers or discharging any duties of the office, or enter any other order to secure proper performance of the duties of the office ~~{-}~~ *to be effective until further order of the court.* Notwithstanding any other provision of law, if it appears to the court that the personal representative otherwise may take ~~{some}~~ action that would jeopardize unreasonably the interest of the petitioner , ~~{or}~~ of some other interested person or the estate, the court may enter the ~~{temporary}~~ *ex parte* order. A person with whom the personal representative may transact business may be made a party to the ~~{temporary}~~ *ex parte* order.

2. ~~{The matter}~~ *Any ex parte orders entered pursuant to subsection 1* must be set for hearing within 10 days after entry of the ~~{temporary}~~ *ex parte* order, unless the parties otherwise agree, or on a date the court otherwise determines is in the best interest of the estate.

3. Notice ~~{as the court directs}~~ *of entry of the ex parte order entered pursuant to subsection 1* must be given by the petitioner *or applicant* to the personal representative and the attorney of record of the personal representative, if any, ~~{and}~~ to any other party named as a party in the ~~{temporary}~~ *ex parte* order ~~{-}~~ *and as otherwise directed by the court.*

4. *The court may impose a fine on an interested person who obtains an ex parte order pursuant to this section without probable cause.*

5. *The court may, at any time, terminate an ex parte order entered pursuant to subsection 1 on its own motion or upon petition of the personal representative if it no longer appears to the court that the personal representative otherwise may take action that would jeopardize unreasonably the interest of the petitioner, of some other interested person or the estate.*

Sec. 16. NRS 146.020 is hereby amended to read as follows:

146.020 ~~{Upon the filing of the inventory or at any time thereafter during the administration of the estate, the}~~

1. *The* court, on its own motion or upon petition by an interested person, may, if deemed advisable considering the needs and resources of the surviving spouse, minor child or minor children, set apart for the use of the surviving spouse, minor child or minor children of the decedent all of the personal property which is exempt by law from execution, and shall, in accordance with



NRS 146.050, set apart the homestead, as designated by the general homestead law then in force, whether the homestead has theretofore previously been selected as required by law or not, and the property thus set apart is not subject to administration.

2. If, after setting apart the property pursuant to subsection 1, the remaining assets of the estate do not exceed \$100,000 and may be set aside without administration pursuant to NRS 146.070, the court shall set aside the remaining assets of the estate without administration pursuant to the procedure set forth in NRS 146.070. The court may consider at the same time a petition made pursuant to subsection 1 and a petition to set aside the remaining assets of the estate without administration pursuant to NRS 146.070.

3. If, after setting apart the property pursuant to subsection 1, the remaining assets of the estate exceed \$100,000 and may not be set aside without administration pursuant to NRS 146.070, the court shall administer the remaining assets of the estate pursuant to this title as if the remaining assets of the estate are the only assets of the estate. If the petition to set apart property pursuant to subsection 1 is made in the initial petition, the court shall consider only the value of the remaining assets of the estate not set apart pursuant to subsection 1 for the purpose of ordering summary administration pursuant to chapter 145 of NRS.

Sec. 17. NRS 162B.105 is hereby amended to read as follows:

162B.105 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~~ :

(a) The governing law adopted by the instrument creating the power; or

(b) 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~~ :

(a) The governing law adopted by the instrument creating the power;

(b) The governing law adopted by the instrument:

(1) Exercising, releasing or disclaiming the power; or

(2) Revoking or amending the exercise, release or disclaimer of the power; or

(c) The law of the powerholder's domicile at the relevant time.

Sec. 18. NRS 162B.200 is hereby amended to read as follows:
162B.200 1. A power of appointment is created only if:

(a) The instrument creating the power ~~is~~

~~(1) Is~~ 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.]~~ 3. Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

Sec. 19. NRS 162B.320 is hereby amended to read as follows:

162B.320 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 *or a nongeneral 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. 20. NRS 162B.365 is hereby amended to read as follows:

162B.365 A powerholder may revoke or amend an exercise of a power of appointment ~~[only to the extent that:]~~ *unless:*

1. The ~~[powerholder reserves a power of revocation or amendment in]~~ *terms of* 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]~~ *expressly state that the exercise is irrevocable or unamendable;*



2. The terms of the instrument creating the power of appointment ~~[provide]~~ *expressly state* that the exercise is ~~[revocable or amendable.]~~ *irrevocable or unamendable; or*

3. *The property is subject to a power of appointment that a powerholder may exercise which has been delivered to the permissible appointee in whose favor the power was exercised, regardless of whether such delivery was made outright, in trust or as custodial property pursuant to chapter 167 of NRS.*

Sec. 21. NRS 162B.510 is hereby amended to read as follows:

162B.510 1. ~~[Except as otherwise provided in subsection 2, appointive]~~ *Appointive* property subject to a general power of appointment created by a person other than the powerholder is *not* subject to a claim of ~~[a]~~ *any* 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.]~~ *, unless the property was exercisable in favor of the decedent or the decedent's estate pursuant to subparagraph (1) of paragraph (a) of subsection 12 of NRS 111.779.*

2. Subject to subsection 3 of NRS 162B.530, 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 NRS 162B.500 to 162B.530, inclusive, as a nongeneral power.

Sec. 22. Chapter 163 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *On petition or ex parte application of a beneficiary or trustee, the court, with or without bond, may enter an ex parte order restraining a trustee from performing specified acts of administration, disbursement or distribution, or exercising any powers or discharging any duties of the office, or enter any other order to secure proper performance of the duties of the office to be effective until further order of the court. Notwithstanding any other provision of law, if it appears to the court that the trustee otherwise may take action that would jeopardize unreasonably the interest of the petitioner, another beneficiary or the trust, the court may enter the ex parte order. A person with whom the personal representative may transact business may be made a party to the ex parte order.*

2. *An ex parte order entered pursuant to subsection 1 must be set for hearing within 10 days after entry of the ex parte order,*



1 *unless the parties otherwise agree, or on a date the court otherwise*
2 *determines is in the best interest of the trust.*

3 3. *Notice of entry of the ex parte order entered pursuant to*
4 *subsection 1 must be given by the petitioner or applicant to the*
5 *trustee and the attorney of record of the trustee, if any, to any*
6 *other party named as a party in the ex parte order and as*
7 *otherwise directed by the court.*

8 4. *The court may impose a fine on a beneficiary or trustee*
9 *who obtains an ex parte order pursuant to this section without*
10 *probable cause.*

11 5. *The court may, at any time, terminate an ex parte order*
12 *entered pursuant to subsection 1 on its own motion or upon*
13 *petition of the trustee if it no longer appears to the court that the*
14 *trustee otherwise may take action that would jeopardize*
15 *unreasonably the interest of the petitioner, another beneficiary or*
16 *the trust.*

17 **Sec. 23.** NRS 163.00195 is hereby amended to read as
18 follows:

19 163.00195 1. Except as otherwise provided in ~~[subsections 3~~
20 ~~and] subsection 4~~, a no-contest clause *in a trust must be enforced,*
21 *to the greatest extent possible, by the court according to the terms*
22 *expressly stated in the no-contest clause without regard to the*
23 *presence or absence of probable cause for, or the good faith or*
24 *bad faith of the beneficiary in, taking the action prohibited by the*
25 *no-contest clause. A no-contest clause* in a trust must be enforced
26 by the court because public policy favors enforcing the intent of the
27 settlor. ~~[However, because public policy does not favor forfeitures, a~~
28 ~~no-contest clause must be strictly construed by the court and must~~
29 ~~not be extended beyond the plain meaning of the express provisions~~
30 ~~of the trust.]~~

31 2. ~~[A no-contest clause must be construed to carry out the~~
32 ~~settlor's intent to the extent such intent is clear and unambiguous.]~~
33 No extrinsic evidence is admissible to establish the settlor's intent
34 concerning the no-contest clause ~~[]~~ *to the extent such intent is*
35 *clear and unambiguous.* The provisions of this subsection do not
36 prohibit extrinsic evidence from being admitted for any other
37 purpose authorized by law.

38 3. Except as otherwise provided in ~~[subsections 3 and]~~
39 *subsection 4*, a beneficiary's share may be reduced or eliminated
40 under a no-contest clause based upon conduct that is set forth by the
41 settlor in the trust. Such conduct may include, without limitation:

42 (a) Conduct other than formal court action; and

43 (b) Conduct which is unrelated to the trust itself, including,
44 without limitation:



(1) The commencement of civil litigation against the settlor's probate estate or family members;

(2) Interference with the administration of another trust or a business entity;

(3) Efforts to frustrate the intent of the settlor's power of attorney; and

(4) Efforts to frustrate the designation of beneficiaries related to a nonprobate transfer by the settlor.

~~3-4~~ 4. Notwithstanding any provision to the contrary in the trust, *a no-contest clause in a trust must not be enforced by a court and a beneficiary's share must not be reduced or eliminated under a no-contest clause in a trust* because : ~~{of any action taken by the beneficiary seeking only to:}~~

(a) *A beneficiary acts to:*

(I) Enforce the *clear and unambiguous* terms of the trust, *a transfer of property into the trust*, any document referenced in or affected by the trust, or any other trust-related instrument;

~~{(b)}~~ (2) Enforce the ~~{beneficiary's}~~ legal rights *of the beneficiary that provide the beneficiary standing as* related to ~~{the}~~ ;

(I) The trust ~~{, any}~~ ;

(II) *A transfer of property into the trust;*

(III) Any document referenced in or affected by the trust ;

~~{}~~ or ~~{any}~~

(IV) *Any other* trust-related instrument;

~~{(c)}~~ (3) Obtain court instruction with respect to the proper administration of the trust or the construction or legal effect of the trust, ~~{the provisions thereof or}~~ *a transfer of property into the trust*, any document referenced in or affected by the trust, or any other trust-related instrument; or

~~{(d)}~~ (4) Enforce the fiduciary duties of the trustee.

~~4.—Notwithstanding any provision to the contrary in the trust, a beneficiary's share must not be reduced or eliminated under a no-contest clause in a trust because the beneficiary institutes legal action seeking to invalidate a trust, any document referenced in or affected by the trust, or any other trust related instrument if the legal action is instituted and maintained in good faith and based on probable cause that would have led a reasonable person, properly informed and advised, to conclude that the trust, any document referenced in or affected by the trust, or other trust related instrument is invalid.~~

~~—5.—Unless the trust expressly provides otherwise, a no-contest clause must not be applied to a settlor who is also a beneficiary of the trust.~~



1 ~~—6.]~~ (b) *The court determines by clear and convincing evidence*
2 *that the conduct of the beneficiary was:*

3 (1) *A product of coercion or undue influence; or*

4 (2) *Caused by the lack of sufficient mental capacity to*
5 *knowingly engage in the conduct.*

6 (c) *A beneficiary acts as a trustee or a protector of the trust to*
7 *exercise a power set forth in the trust, including, without*
8 *limitation:*

9 (1) *Reforming, modifying or decanting the trust;*

10 (2) *Removing or replacing a trustee;*

11 (3) *Making or withholding distributions from the trust; or*

12 (4) *Exercising any other discretionary power.*

13 (d) *A beneficiary or any other interested person enters into an*
14 *agreement to settle a dispute or resolve any other matter relating*
15 *to the trust.*

16 (e) *A beneficiary institutes legal action seeking to invalidate a*
17 *trust, the transfer of property into a trust, any document*
18 *referenced in or affected by the trust, or any other trust-related*
19 *instrument if the legal action is instituted and maintained in good*
20 *faith and based on probable cause. For the purposes of this*
21 *paragraph, legal action is based on probable cause where, based*
22 *upon the facts and circumstances available to the beneficiary who*
23 *commences such legal action, a reasonable person, properly*
24 *informed and advised, would conclude that the trust, the transfer*
25 *of property into the trust, any document referenced in or affected*
26 *by the trust or any other trust-related instrument is invalid.*

27 (f) *Unless the trust expressly provides otherwise, a settlor is*
28 *also a beneficiary of the trust.*

29 5. *Where a beneficiary takes action, asserts a cause of action*
30 *or asserts a request for relief and such action or assertion violates*
31 *a no-contest clause in a trust, this section must not prevent the*
32 *enforcement of the no-contest clause unless the action, cause of*
33 *action or request for relief claims one of the exceptions to*
34 *enforcement set forth in subsection 4.*

35 6. *Except as otherwise provided in subsection 4, subject to the*
36 *discretion of the trustee:*

37 (a) *A trustee may suspend distributions to a beneficiary to the*
38 *extent that, under a no-contest provision, the conduct of the*
39 *beneficiary may cause the reduction or elimination of the interest*
40 *of the beneficiary in the trust.*

41 (b) *Until a court determines whether the interest of the*
42 *beneficiary in the trust has been reduced or eliminated, a trustee*
43 *may:*

44 (1) *Resume distributions that were suspended pursuant to*
45 *paragraph (a) at any time; or*



(2) *Continue to suspend those distributions.*

(c) *To the extent that a beneficiary has received distributions before engaging in conduct that potentially would have caused the reduction or elimination of the interest of the beneficiary in the trust under a no-contest clause, a trustee may seek reimbursement from the beneficiary or may offset those distributions.*

7. *A no-contest clause applies to an amendment to the trust or trust-related document even if the no-contest clause was not expressly incorporated in such an amendment.*

8. As used in this section:

(a) "No-contest clause" means one or more provisions in a trust that express a directive to reduce or eliminate the share allocated to a beneficiary or to reduce or eliminate the distributions to be made to a beneficiary if the beneficiary takes action to frustrate or defeat the settlor's intent as expressed in the trust or in a trust-related instrument. *The term does not include:*

(1) *Provisions in a trust that shift or apportion attorney's fees and costs incurred by the trust against the share allocated to a beneficiary who has asserted an unsuccessful claim, defense or objection;*

(2) *Provisions in a trust that permit a trustee to delay distributions to a beneficiary;*

(3) *Provisions in a trust that require the arbitration of disputes involving the trust;*

(4) *A forum selection clause in the trust; or*

(5) *Provisions in a trust that make a devise conditional or specify conditions or actions pursuant to NRS 163.558.*

(b) "Trust" means the original trust instrument and each amendment made pursuant to the terms of the original trust instrument.

(c) "Trust-related instrument" means any document purporting to transfer property to or from the trust or any document made pursuant to the terms of the trust purporting to direct the distribution of trust assets or to affect the management of trust assets, including, without limitation, documents that attempt to exercise a power of appointment.

Sec. 24. NRS 163.004 is hereby amended to read as follows:

163.004 1. Except as otherwise provided by law, the terms of a trust instrument may expand, restrict, eliminate or otherwise vary the rights and interests of beneficiaries in any manner that is not illegal or against public policy, including, without limitation:

(a) The right to be informed of the beneficiary's interest for a period of time;

(b) The grounds for the removal of a fiduciary;



(c) The circumstances, if any, in which the fiduciary must diversify investments;

(d) A fiduciary's powers, duties, standards of care, rights of indemnification and liability to persons whose interests arise from the trust instrument; and

(e) The provisions of general applicability to trusts and trust administration.

2. A trust is irrevocable by the settlor *or a third party* except to the extent that a right to amend the trust or a right to revoke the trust is expressly reserved by the settlor ~~or~~ *or is granted to one or more other persons under the terms of the trust instrument. Notwithstanding the provisions of this subsection, such a settlor or other person may not use the following powers to revoke a trust:*

(a) Power of appointment;

(b) Power to add or remove beneficiaries;

(c) Power to appoint, remove or replace the trustee; or

(d) Power to make administrative amendments.

3. Nothing in this section shall be construed to:

(a) Authorize the exculpation or indemnification of a fiduciary for the fiduciary's own willful misconduct or gross negligence; or

(b) Preclude a court of competent jurisdiction from removing a fiduciary because of the fiduciary's willful misconduct or gross negligence.

4. The rule that statutes in derogation of the common law are to be strictly construed has no application to this section. This section must be liberally construed to give maximum effect to the principle of freedom of disposition and to the enforceability of trust instruments.

Sec. 25. NRS 163.020 is hereby amended to read as follows:

163.020 As used in NRS 163.010 to 163.200, inclusive, *and section 22 of this act*, unless the context or subject matter otherwise requires:

1. "Affiliate" means any person directly or indirectly controlling or controlled by another person, or any person under direct or indirect common control with another person. It includes any person with whom a trustee has an express or implied agreement regarding the purchase of trust investments by each from the other, directly or indirectly, except a broker or stock exchange.

2. "Relative" means a spouse, ancestor, descendant, brother or sister.

3. "Trust" means an express trust only.

4. "Trustee" means the person holding property in trust and includes trustees, a corporate as well as a natural person and a successor or substitute trustee.



1 **Sec. 26.** NRS 163.115 is hereby amended to read as follows:

2 163.115 1. *A settlor, cotrustee or beneficiary of the trust*
3 *may request the court to remove a trustee, or a trustee may be*
4 *removed by the court on its own motion pursuant to subsection 2.*

5 2. *The court may remove a trustee if:*

6 (a) *The trustee commits or threatens to commit a breach of*
7 *trust;*

8 (b) *Lack of cooperation between cotrustees substantially*
9 *impairs the administration of the trust; or*

10 (c) *Because of unfitness, unwillingness or persistent failure of*
11 *the trustee to administer the trust effectively, the court determines*
12 *that removal of the trustee best serves the interests of the settlor or*
13 *beneficiaries.*

14 3. If a trustee commits or threatens to commit a breach of trust,
15 a beneficiary or cotrustee of the trust may maintain a proceeding for
16 any of the following purposes that is appropriate:

17 (a) To compel the trustee to perform his or her duties.

18 (b) To enjoin the trustee from committing the breach of trust.

19 (c) To compel the trustee to redress the breach of trust by
20 payment of money or otherwise.

21 (d) To appoint a receiver or temporary trustee to take possession
22 of the trust property and administer the trust.

23 (e) To remove the trustee.

24 (f) To set aside acts of the trustee.

25 (g) To reduce or deny compensation of the trustee.

26 (h) To impose an equitable lien or a constructive trust on trust
27 property.

28 (i) To trace trust property that has been wrongfully disposed of
29 and recover the property or its proceeds.

30 ~~2. On petition or ex parte application of a beneficiary or~~
31 ~~trustee, the court by temporary order, with or without bond, may~~
32 ~~restrain a trustee from performing specified acts of administration,~~
33 ~~disbursement or distribution, or exercising any powers or~~
34 ~~discharging any duties of the office, or enter any other order to~~
35 ~~secure proper performance of the duties of the office.~~
36 ~~Notwithstanding any other provision of law governing temporary~~
37 ~~injunctions, if it appears to the court that the trustee otherwise may~~
38 ~~take some action that would jeopardize unreasonably the interest of~~
39 ~~the petitioner, another beneficiary or the trust, the court may enter~~
40 ~~the temporary order. A person with whom the trustee may transact~~
41 ~~business may be made a party to the temporary order.~~

42 ~~3. Any temporary order entered pursuant to subsection 2 must~~
43 ~~be set for hearing within 10 days after entry of the temporary order,~~
44 ~~unless the parties otherwise agree, or on a date the court otherwise~~
45 ~~determines is in the best interests of the trust. Notice of entry of the~~



~~temporary order must be given by the petitioner to the trustee and the attorney of record of the trustee, if any, to any other party named as a party in the temporary order and as otherwise directed by the court.]~~

4. *If the court determines that a proceeding instituted pursuant to subsection 1 by a settlor, cotrustee or beneficiary of the trust against a trustee was not instituted in good faith and based on probable cause, the court may order that the settlor, cotrustee or beneficiary who is maintaining the proceeding against a trustee pay all or part of the costs of the proceeding, including, without limitation, reasonable attorney's fees. The provisions of this subsection do not preclude any other remedy available.*

5. The ~~[provision]~~ provisions of ~~[remedies in this section does]~~ subsections 2 and 3 do not preclude resort to any other appropriate ground or remedy provided by statute or common law.

~~[5.]~~ 6. A proceeding under this section must be commenced by filing or bringing in conjunction with the filing of a petition under NRS 164.010 and 164.015.

Sec. 27. NRS 163.160 is hereby amended to read as follows:

163.160 1. The settlor of a trust affected by NRS 163.010 to 163.200, inclusive, *and section 22 of this act* may, by provision in the instrument creating the trust if the trust was created by a writing, or by oral statement to the trustee at the time of the creation of the trust if the trust was created orally, or by an amendment of the trust if the settlor reserved the power to amend the trust, relieve his or her trustee from any or all of the duties, restrictions and liabilities which would otherwise be imposed upon the trustee by NRS 163.010 to 163.200, inclusive, *and section 22 of this act*, or alter or deny to his or her trustee any or all of the privileges and powers conferred upon the trustee by NRS 163.010 to 163.200, inclusive, *and section 22 of this act*, or add duties, restrictions, liabilities, privileges or powers to those imposed or granted by NRS 163.010 to 163.200, inclusive, *and section 22 of this act*, but no act of the settlor relieves a trustee from the duties, restrictions and liabilities imposed upon the trustee by NRS 163.030, 163.040 and 163.050.

2. Except as otherwise provided in subsections 1 and 3, a trustee may be relieved of liability for breach of trust by provisions of the trust instrument.

3. A provision of the trust instrument is not effective to relieve a trustee of liability:

(a) For breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of a beneficiary; or

(b) For any profit that the trustee derives from a breach of trust.



Sec. 28. NRS 163.170 is hereby amended to read as follows:

163.170 A beneficiary of a trust affected by NRS 163.010 to 163.200, inclusive, *and section 22 of this act* may, if of full legal capacity and acting upon full information, by written instrument delivered to the trustee, relieve the trustee as to that beneficiary from any or all of the duties, restrictions and liabilities which would otherwise be imposed on the trustee by NRS 163.010 to 163.200, inclusive, *and section 22 of this act*, except as to the duties, restrictions and liabilities imposed by NRS 163.030, 163.040 and 163.050. The beneficiary may release the trustee from liability to him or her for past violations of any of the provisions of NRS 163.010 to 163.200, inclusive ~~[H]~~, *and section 22 of this act*.

Sec. 29. NRS 163.180 is hereby amended to read as follows:

163.180 A court may, for cause shown and upon notice to the beneficiaries, relieve a trustee from any or all of the duties and restrictions which would otherwise be placed upon the trustee by NRS 163.010 to 163.200, inclusive, *and section 22 of this act*, or wholly or partly excuse a trustee who has acted honestly and reasonably from liability for violation of the provisions of NRS 163.010 to 163.200, inclusive ~~[H]~~, *and section 22 of this act*.

Sec. 30. NRS 163.190 is hereby amended to read as follows:

163.190 If a trustee violates any of the provisions of NRS 163.010 to 163.200, inclusive, *and section 22 of this act*, the trustee may be removed and denied compensation in whole or in part, and any beneficiary, cotrustee or successor trustee may treat the violation as a breach of trust.

Sec. 31. NRS 163.200 is hereby amended to read as follows:

163.200 NRS 163.010 to 163.200, inclusive, *and section 22 of this act* must be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Sec. 32. NRS 163.556 is hereby amended to read as follows:

163.556 1. Except as otherwise provided in this section, unless the terms of a testamentary instrument or irrevocable trust provide otherwise, a trustee with discretion or authority to distribute trust income or principal to or for a beneficiary of the trust may exercise such discretion or authority by appointing the property subject to such discretion or authority in favor of a second trust as provided in this section.

2. The second trust to which a trustee appoints property of the ~~[first]~~ *original* trust may only have as beneficiaries one or more of the beneficiaries of the original trust:

(a) To or for whom a distribution of income or principal may be made from the original trust;



(b) To or for whom a distribution of income or principal may be made in the future from the original trust at a time or upon the happening of an event specified under the ~~first~~ original trust; or

(c) Both paragraphs (a) and (b).

➔ For purposes of this subsection, a permissible appointee of a power of appointment exercised by a beneficiary of the second trust is not considered a beneficiary of the second trust.

3. A trustee may not appoint property of the original trust to a second trust if:

(a) Appointing the property will reduce any income interest of any income beneficiary of the original trust if the original trust is:

(1) A trust for which a marital deduction has been taken for federal or state income, gift or estate tax purposes;

(2) A trust for which a charitable deduction has been taken for federal or state income, gift or estate tax purposes; or

(3) A grantor-retained annuity trust or unitrust under 26 C.F.R. § 25.2702-3(b) and (c).

➔ As used in this paragraph, "unitrust" has the meaning ascribed to it in NRS 164.700.

(b) The property to be appointed is subject to a power of withdrawal which is held by a beneficiary of the original trust and may be executed at the time of the proposed appointment, unless after the exercise of such appointment, the beneficiary of the original trust's power of withdrawal is unchanged with respect to the trust property.

(c) Property specifically allocated for one beneficiary of the original trust is no longer allocated for that beneficiary under either or both trusts, unless the beneficiary consents in writing.

~~(d) Property held for the benefit of one or more beneficiaries under both the original and the second trust has a lower value than the value of the property held for the benefit of the same beneficiaries under only the original trust, unless:~~

~~—(1) The benefit provided is limited to a specific amount or periodic payments of a specific amount; and~~

~~—(2) The value of the property held in either or both trusts for the benefit of one or more beneficiaries is actuarially adequate to provide the benefit.~~

~~(e)}~~ A contribution made to the original trust qualified for a gift tax exclusion as described in section 2503(b) of the Internal Revenue Code, 26 U.S.C. § 2503(b), by reason of the application of section 2503(c) of the Internal Revenue Code, 26 U.S.C. § 2503(c), unless the second trust provides that the beneficiary's remainder interest must vest not later than the date upon which such interest would have vested under the terms of the original trust.



4. A trustee who is a beneficiary of the original trust may not exercise the authority to appoint property of the original trust to a second trust if:

(a) Under the terms of the original trust or pursuant to law governing the administration of the original trust:

(1) The trustee does not have discretion to make distributions to himself or herself;

(2) The trustee's discretion to make distributions to himself or herself is limited by an ascertainable standard, and under the terms of the second trust, the trustee's discretion to make distributions to himself or herself is not limited by the same ascertainable standard; or

(3) The trustee's discretion to make distributions to himself or herself can only be exercised with the consent of a cotrustee or a person holding an adverse interest and under the terms of the second trust the trustee's discretion to make distributions to himself or herself is not limited by an ascertainable standard and may be exercised without consent; or

(b) Under the terms of the original trust or pursuant to law governing the administration of the original trust, the trustee of the original trust does not have discretion to make distributions that will discharge the trustee's legal support obligations but under the second trust the trustee's discretion is not limited.

5. Notwithstanding the provisions of subsection 1, a trustee who may be removed by the beneficiary or beneficiaries of the original trust and replaced with a trustee that is related to or subordinate, as described in section 672 of the Internal Revenue Code, 26 U.S.C. § 672(c), to a beneficiary, may not exercise the authority to appoint property of the original trust to a second trust to the extent that the exercise of the authority by such trustee would have the effect of increasing the distributions that can be made from the second trust to such beneficiary or group of beneficiaries that held the power to remove the trustee of the original trust and replace such trustee with a related or subordinate person, unless the distributions that may be made from the second trust to such beneficiary or group of beneficiaries described in paragraph (a) of subsection 4 are limited by an ascertainable standard.

6. The provisions of subsections 4 and 5 do not prohibit a trustee who is not a beneficiary of the original trust or who may not be removed by the beneficiary or beneficiaries and replaced with a trustee that is related to or subordinate to a beneficiary from exercising the authority to appoint property of the original trust to a second trust pursuant to the provisions of subsection 1.



7. Before appointing property pursuant to subsection 1, a trustee may give notice of a proposed action pursuant to NRS 164.725 or may petition a court for approval pursuant to NRS 153.031, 164.015 or 164.725. Any notice of a proposed action or a petition for a court's approval must include the trustee's opinion of how the appointment of property will affect the trustee's compensation and the administration of other trust expenses.

8. The trust instrument of the second trust may:

(a) Grant a general or limited power of appointment to one or more of the beneficiaries of the second trust who are beneficiaries of the original trust.

(b) Provide that, at a time or occurrence of an event specified in the trust instrument, the remaining trust assets in the second trust must be held for the beneficiaries of the original trust upon terms and conditions that are substantially identical to the terms and conditions of the original trust.

9. The power to appoint the property of the original trust pursuant to subsection 1 must be exercised by a writing, signed by the trustee and filed with the records of the trust.

10. The exercise of the power to invade principal of the original trust pursuant to subsection 1 is considered the exercise of a power of appointment, other than power to appoint the property to the trustee, the trustee's creditors, the trustee's estate or the creditors of the trustee's estate and the provisions of NRS 111.1031 apply to such power of appointment.

11. The provisions of this section do not abridge the right of any trustee who has the power to appoint property which arises under any other law.

12. The provisions of this section do not impose upon a trustee a duty to exercise the power to appoint property pursuant to subsection 1.

13. The power to appoint property to another trust pursuant to subsection 1 is not a power to amend the trust and a trustee is not prohibited from appointing property to another trust pursuant to subsection 1 if the original trust is irrevocable or provides that it may not be amended.

14. A trustee's power to appoint property to another trust pursuant to subsection 1 is not limited by the existence of a spendthrift provision in the original trust.

15. A trustee exercising any power granted pursuant to this section may designate himself or herself or any other person permitted to act as a trustee as the trustee of the second trust.



16. The trustee of a second trust, resulting from the exercise of the power to appoint property to another trust pursuant to subsection 1, may also exercise the powers granted pursuant to this section with respect to the second trust.

17. This section applies to a trust that is governed by, situated in or administered under the laws of this State, whether the trust is initially governed by, situated in or administered under the laws of this State pursuant to the terms of the trust instrument or whether the governing law, situs or administration of the trust is moved to this State from another state or foreign jurisdiction.

18. The power to appoint to a second trust pursuant to this section may be exercised to appoint to a second trust that is a special needs trust, pooled trust or third-party trust.

19. As used in this section:

(a) "Ascertainable standard" means a standard relating to a person's health, education, support or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code, 26 U.S.C. § 2041(b)(1)(A) or 2514(c)(1), and any regulations of the United States Treasury promulgated thereunder.

(b) "Pooled trust" means a trust described in 42 U.S.C. § 1396p(d)(4)(C) that meets the requirements for such a trust under any law or regulation of this State relating to the treatment of trusts for purposes of eligibility for Medicaid or other needs-based public assistance.

(c) "Second trust" means an irrevocable trust that receives trust income or principal appointed by the trustee of the original trust, and may be established by any person, including, without limitation, a new trust created by the trustee, acting in that capacity, of the original trust. If the trustee of the original trust establishes the second trust, then for purposes of creating the new second trust, the requirement of NRS 163.008 that the instrument be signed by the settlor shall be deemed to be satisfied by the signature of the trustee of the ~~second~~ original trust. The second trust may be a trust created under ~~the same~~ :

(1) *The original trust instrument ~~as the original trust~~, as modified after an appointment of property made pursuant to this section; or ~~under a~~*

(2) *A different trust instrument.*

(d) "Special needs trust" means a trust under 42 U.S.C. § 1396p(d)(4)(A) that meets the requirements for such a trust under any law or regulation of this State relating to the treatment of trusts for purposes of eligibility for Medicaid or other needs-based public assistance.



(e) "Third-party trust" means a trust that is:

(1) Established by a third party with the assets of the third party to provide for the supplemental needs of a person who is eligible for needs-based public assistance at or after the time of the creation of the trust; and

(2) Exempt from the provisions of any law or regulation of this State relating to the treatment of trusts for purposes of eligibility for Medicaid.

Sec. 33. NRS 163.590 is hereby amended to read as follows:

163.590 1. Whether or not the provisions relating to electronic trusts apply, a trust may refer to a written statement or list, including, without limitation, a written statement or list contained in an electronic record, to dispose of items of ~~personal trust~~ **tangible** property not otherwise specifically disposed of by the trust . ~~[, other than money, evidences of indebtedness, documents of title, securities and property used in a trade or business.]~~

2. To be admissible as evidence of the intended disposition, the statement or list must contain:

(a) The date of its execution.

(b) A title indicating its purpose.

(c) A reference to the trust to which it relates.

(d) A reasonably certain description of the items to be disposed of and the beneficiaries.

(e) The handwritten signature or electronic signature of the settlor.

3. The statement or list may be:

(a) Referred to as a writing to be in existence at the death of the settlor.

(b) Prepared before or after the execution of the trust instrument.

(c) Altered by the settlor after its preparation.

(d) A writing which has no significance apart from its effect upon the dispositions made by the trust.

4. Except as otherwise provided in this subsection, the statement or list may be used to dispose of all items of trust property, regardless of whether the trust property is real or personal property or tangible or intangible property. The trust instrument may limit the use of the statement or list so that the statement or list:

(a) Is expressly limited to tangible personal property;

(b) Cannot be used to direct the disposition of trust property that is above a value specified by the trust instrument; or

(c) Is not applicable to certain types of property, including, without limitation:



- (1) *Money;*
- (2) *Evidences of indebtedness;*
- (3) *Documents of title;*
- (4) *Securities; and*
- (5) *Property used in a trade or business.*

Sec. 34. Chapter 164 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The expenses and compensation of a trustee of a nontestamentary trust must initially be governed by the terms of the nontestamentary trust. Thereafter, subject to any contrary terms of the nontestamentary trust, the court shall allow the trustee his or her proper expenses and such compensation for services as are just and reasonable.

2. Where there are several trustees, compensation must be apportioned among the trustees according to the respective services rendered, and such compensation may be:

- (a) A fixed yearly compensation for each trustee;*
- (b) A set amount for the term of service;*
- (c) An hourly rate for services rendered; or*
- (d) Pursuant to a standard schedule of fees.*

3. The provisions of this section must not be interpreted to abridge the authority of a court having jurisdiction over a testamentary trust pursuant to NRS 153.020 or 164.010 to review and settle the expenses and compensation of the trustee of a testamentary trust upon the petition of any interested person.

4. As used in this section, "nontestamentary trust" has the meaning ascribed to it in NRS 163.0016.

Sec. 35. NRS 164.025 is hereby amended to read as follows:

164.025 1. The trustee of a nontestamentary trust may after the death of the settlor of the trust cause to be published a notice in the manner specified in paragraph (b) of subsection 1 of NRS 155.020 and mail a copy of the notice to known or readily ascertainable creditors.

2. The notice must be in substantially the following form:

- (a) For a claim against the settlor:*

NOTICE TO CREDITORS

Notice is hereby given that the undersigned is the duly appointed and qualified trustee of the trust., the settlor of that trust died on A creditor having a claim against the settlor must file a claim with the undersigned at the address given below within 90 days after the first publication of this notice.



Dated.....

.....
Trustee

.....
Address

(b) For a claim against the trust:

NOTICE TO CREDITORS

Notice is hereby given that the undersigned is the duly appointed and qualified trustee of the trust., the settlor of that trust died on A creditor having a claim against the trust estate must file a claim with the undersigned at the address given below within 90 days after the first publication of this notice.

Dated

.....
Trustee

.....
Address

3. A person having a claim, due or to become due, against a settlor or the trust , *as applicable*, must file the claim with the trustee within 90 days after the mailing, for those required to be mailed, or 90 days after publication of the first notice to creditors. Any claim against *a settlor or* the trust estate , *as applicable*, not filed within that time is forever barred. After the expiration of the time ~~to file a claim as provided in this section~~, the trustee may distribute the assets of the trust to its beneficiaries without personal liability ~~to any creditor who has failed to file a~~ *for any* claim *which has not been timely filed* with the trustee.

4. If the trustee knows or has reason to believe that the settlor received public assistance during the lifetime of the settlor, the trustee shall, whether or not the trustee gives notice to other creditors, give notice within 30 days after the death to the Department of Health and Human Services in the manner provided in NRS 155.010. If notice to the Department is required by this subsection but is not given, the trust estate and any assets transferred to a beneficiary remain subject to the right of the Department to recover public assistance received.



* A B 2 8 6 *

5. If a claim is rejected by the trustee, in whole or in part, the trustee must, within 10 days after the rejection, notify the claimant of the rejection by written notice forwarded by registered or certified mail to the mailing address of the claimant. The claimant must bring suit in the proper court against the trustee within 60 days after the notice is given, whether the claim is due or not, or the claim is barred forever and the trustee may distribute the assets of the trust to its beneficiaries without personal liability to any creditor whose claim is barred forever.

6. As used in this section, "nontestamentary trust" has the meaning ascribed to it in NRS 163.0016.

Sec. 36. NRS 164.038 is hereby amended to read as follows:

164.038 1. Unless otherwise represented by counsel, a minor, incapacitated person, unborn person or person whose identity or location is unknown and not reasonably ascertainable may be represented by another person who has a substantially similar interest with respect to the question or dispute.

2. A person may only be represented by another person pursuant to subsection 1 if there is no material conflict of interest between the person and the representative with respect to the question or dispute for which the person is being represented. If a person is represented pursuant to subsection 1, the results of that representation in the question or dispute will be binding on the person.

3. A presumptive remainder beneficiary may represent and bind a beneficiary with a contingent remainder for the same purpose, in the same circumstance and to the same extent as an ascertainable beneficiary may bind a minor, incapacitated person, unborn person or person who cannot be ascertained.

4. *A powerholder may represent and bind a person who is a permissible appointee or taker in default of appointment.*

5. If a trust has a minor or incapacitated beneficiary who may not be represented by another person pursuant to this section, the custodial parent or guardian of the estate of the minor or incapacitated beneficiary may represent the minor or incapacitated beneficiary in any judicial proceeding or nonjudicial matter pertaining to the trust. A minor or incapacitated beneficiary may only be represented by a parent or guardian if there is no material conflict of interest between the minor or incapacitated beneficiary and the parent or guardian with respect to the question or dispute. If a minor or incapacitated beneficiary is represented pursuant to this subsection, the results of that representation will be binding on the minor or incapacitated beneficiary. The representation of a minor or incapacitated beneficiary pursuant to this subsection is binding on an unborn person or a person who cannot be ascertained if:



(a) The unborn person or a person who cannot be ascertained has an interest substantially similar to the minor or incapacitated person; and

(b) There is no material conflict of interest between the unborn person or a person who cannot be ascertained and the minor or incapacitated person with respect to the question or dispute.

~~{5-}~~ 6. As used in this section ~~[-, “presumptive”]~~:

(a) *“Permissible appointee” has the meaning ascribed to it in NRS 162B.065.*

(b) *“Powerholder” has the meaning ascribed to it in NRS 162B.080.*

(c) *“Presumptive remainder beneficiary”* means:

~~{(a)}~~ (1) A beneficiary who would receive income or principal of the trust if the trust were to terminate as of that date, regardless of the exercise of a power of appointment; or

~~{(b)}~~ (2) A beneficiary who, if the trust does not provide for termination, would receive or be eligible to receive distributions of income or principal of the trust if all beneficiaries of the trust who were receiving or eligible to receive distributions were deceased.

(d) *“Taker in default of appointment” has the meaning ascribed to it in NRS 162B.095.*

Sec. 37. NRS 164.045 is hereby amended to read as follows:

164.045 1. The laws of this State govern the validity and construction of a trust if:

(a) The trust instrument so provides;

(b) Designated by a person who, under the terms of the trust instrument, has the right to designate the laws that govern the validity and construction of the trust, at the time the designation is made; or

(c) The trust instrument does not provide for the law that governs the validity and construction of the trust, a person designated under the terms of the trust instrument to designate the law that governs the validity and construction of the trust, if any, has not made such a designation and the settlor or the trustee of the trust was a resident of this State at the time the trust was created or at the time the trust became irrevocable.

~~{-A trust instrument or designation cannot extend the duration of the trust beyond the rule against perpetuities otherwise applicable to the trust at the time of its creation.-}~~

2. A person not domiciled in this State may have the right to designate the laws that govern the validity and construction of a trust if properly designated under the trust instrument.

3. A trust, the situs of which is outside this State, that moves its situs to this State is valid whether or not the trust complies with the laws of this State at the time of its creation or after its creation.



Sec. 38. NRS 164.930 is hereby amended to read as follows:

164.930 1. A provision in a will or trust instrument requiring the arbitration of disputes other than disputes of the validity of all or a part of a will or trust, between or among ~~the~~ *one or more* beneficiaries ~~and a fiduciary~~ *or fiduciaries* under the will or trust, *a settlor of a nontestamentary trust*, or any combination of such persons or entities, is enforceable. *Such a provision in a will or trust instrument is not subject to the requirements of NRS 597.995.*

2. Unless otherwise specified in the will or trust, a will or trust provision requiring arbitration shall be presumed to require binding arbitration under NRS 38.206 to 38.248, inclusive. If an arbitration enforceable under this section is governed under NRS 38.206 to 38.248, inclusive, the arbitration provision in the will or trust shall be treated as an agreement for the purposes of applying the provisions of NRS 38.206 to 38.248, inclusive.

3. The court is authorized to appoint a guardian ad litem at any time during the arbitration procedure to represent the interests of a minor or a person who is incapacitated, unborn, unknown or unascertained, or a designated class of persons who are not ascertained or are not in being. If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests. The guardian ad litem is entitled to reasonable compensation for services with such compensation to be paid from the principal of the estate or trust whose beneficiaries are represented. The provisions of NRS 164.038 and the common law relating to the doctrine of virtual representation apply to the dispute resolution procedure unless the common law rule or doctrine is inconsistent with the provisions of NRS 164.038, and any action taken by a court enforcing the judgment is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise virtually represented.

4. Such arbitration in a provision in a will or trust may include, without limitation:

(a) The number, method of selection and minimum qualifications of arbitrators;

(b) The selection and establishment of arbitration procedures, including, without limitation, the incorporation of the arbitration rules for wills and trusts adopted by the American Arbitration Association;

(c) The county in which the dispute resolution will take place;

(d) The scope of discovery;

(e) The burden of proof;

(f) Confidentiality of the arbitration process and the evidence produced during arbitration and discovery;



- (g) The awarding of attorney's fees, expert fees and costs;
- (h) The time period in which the arbitration must be conducted and deciding an award;
- (i) The method of allocating the appointed person's fees and expenses among the parties;
- (j) The required appointment of guardians ad litem;
- (k) The consequences to a party who fails to act in accordance with such provisions or contests such provisions; and
- (l) Other matters which are not inconsistent with NRS 38.206 to 38.248, inclusive.

Sec. 39. Chapter 166 of NRS is hereby amended by adding thereto the provisions set forth as sections 40 and 41 of this act.

Sec. 40. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 166.020 and section 41 of this act have the meanings ascribed to them in those sections.*

Sec. 41. "Settlor" means:

1. The person who creates a spendthrift trust, however described in the spendthrift trust instrument; or

2. Any person who contributes assets to the spendthrift trust. Such a person is a settlor as to the assets he or she contributed to the spendthrift trust except to the extent of consideration received therefor by that person.

Sec. 42. NRS 166.020 is hereby amended to read as follows:

166.020 ~~{For the purposes of this chapter, a spendthrift trust is defined to be}~~ *"Spendthrift trust" means* a trust in which by the terms thereof a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed. It is an active trust not governed or executed by any use or rule of law of uses.

Sec. 43. NRS 166.120 is hereby amended to read as follows:

166.120 1. A spendthrift trust ~~{as defined in this chapter}~~ restrains and prohibits generally the assignment, alienation, acceleration and anticipation of any interest of the beneficiary under the trust by the voluntary or involuntary act of the beneficiary, or by operation of law or any process or at all. The trust estate, or corpus or capital thereof, shall never be assigned, aliened, diminished or impaired by any alienation, transfer or seizure so as to cut off or diminish the payments, or the rents, profits, earnings or income of the trust estate that would otherwise be currently available for the benefit of the beneficiary.

2. Payments by the trustee to the beneficiary, whether such payments are mandatory or discretionary, must be made only to or for the benefit of the beneficiary and not by way of acceleration or anticipation, nor to any assignee of the beneficiary, nor to or upon any order, written or oral, given by the beneficiary, whether such



1 assignment or order be the voluntary contractual act of the
2 beneficiary or be made pursuant to or by virtue of any legal process
3 in judgment, execution, attachment, garnishment, bankruptcy or
4 otherwise, or whether it be in connection with any contract, tort or
5 duty. Any action to enforce the beneficiary's rights, to determine if
6 the beneficiary's rights are subject to execution, to levy an
7 attachment or for any other remedy must be made only in a
8 proceeding commenced pursuant to chapter 153 of NRS, if against a
9 testamentary trust, or NRS 164.010, if against a nontestamentary
10 trust. A court has exclusive jurisdiction over any proceeding
11 pursuant to this section.

12 3. The beneficiary shall have no power or capacity to make any
13 disposition whatever of any of the income by his or her order,
14 voluntary or involuntary, and whether made upon the order or
15 direction of any court or courts, whether of bankruptcy or otherwise;
16 nor shall the interest of the beneficiary be subject to any process of
17 attachment issued against the beneficiary, or to be taken in
18 execution under any form of legal process directed against the
19 beneficiary or against the trustee, or the trust estate, or any part of
20 the income thereof, but the whole of the trust estate and the income
21 of the trust estate shall go to and be applied by the trustee solely for
22 the benefit of the beneficiary, free, clear, and discharged of and
23 from any and all obligations of the beneficiary whatsoever and of all
24 responsibility therefor.

25 4. The trustee of a spendthrift trust is required to disregard and
26 defeat every assignment or other act, voluntary or involuntary, that
27 is attempted contrary to the provisions of this chapter.

28 *5. A provision in a trust instrument that provides the*
29 *restrictions set forth in this section is an enforceable restriction on*
30 *the transfer of a beneficial interest of the transferor that is*
31 *enforceable under applicable nonbankruptcy law pursuant to 11*
32 *U.S.C. § 541(c)(2).*

33 **Sec. 44.** NRS 166.170 is hereby amended to read as follows:

34 166.170 1. *A person may not bring an action with respect to*
35 *the validity of a trust or to its qualification as a spendthrift trust*
36 *unless the action is commenced within 2 years after the trust is*
37 *created. An action with respect to the validity of a trust or to its*
38 *qualification as a spendthrift trust that involves specific trust*
39 *property is an action with respect to a transfer of property to a*
40 *spendthrift trust and must be commenced within the time*
41 *permitted pursuant to subsection 2.*

42 2. A person may not bring an action with respect to a transfer
43 of property to a spendthrift trust:

44 (a) If the person is a creditor when the transfer is made, unless
45 the action is commenced within:



1 (1) Two years after the transfer is made; or
2 (2) Six months after the person discovers or reasonably
3 should have discovered the transfer,
4 ➡ whichever is later.

5 (b) If the person becomes a creditor after the transfer is made,
6 unless the action is commenced within 2 years after the transfer is
7 made.

8 ~~[2-]~~ 3. A person shall be deemed to have discovered a transfer
9 at the time a public record is made of the transfer, including, without
10 limitation, the conveyance of real property that is recorded in the
11 office of the county recorder of the county in which the property is
12 located or the filing of a financing statement pursuant to chapter 104
13 of NRS.

14 ~~[3-]~~ 4. A creditor may not bring an action with respect to
15 transfer of property to a spendthrift trust unless a creditor can prove
16 by clear and convincing evidence that the transfer of property was a
17 fraudulent transfer pursuant to chapter 112 of NRS or that the
18 transfer violates a legal obligation owed to the creditor under a
19 contract or a valid court order that is legally enforceable by that
20 creditor. In the absence of such clear and convincing proof, the
21 property transferred is not subject to the claims of the creditor. Proof
22 by one creditor that a transfer of property was fraudulent or
23 wrongful does not constitute proof as to any other creditor and proof
24 of a fraudulent or wrongful transfer of property as to one creditor
25 shall not invalidate any other transfer of property.

26 ~~[4-]~~ 5. If property transferred to a spendthrift trust is conveyed
27 to the settlor or to a beneficiary for the purpose of obtaining a loan
28 secured by a mortgage or deed of trust on the property and then
29 reconveyed to the trust, for the purpose of subsection ~~[4-]~~ 2, the
30 transfer is disregarded and the reconveyance relates back to the date
31 the property was originally transferred to the trust. The mortgage or
32 deed of trust on the property shall be enforceable against the trust.

33 ~~[5-]~~ 6. A person may not bring a claim against an adviser to
34 the settlor or trustee of a spendthrift trust unless the person can show
35 by clear and convincing evidence that the adviser acted in violation
36 of the laws of this State, knowingly and in bad faith, and the
37 adviser's actions directly caused the damages suffered by the
38 person.

39 ~~[6-]~~ 7. A person other than a beneficiary or settlor may not
40 bring a claim against a trustee of a spendthrift trust unless the person
41 can show by clear and convincing evidence that the trustee acted in
42 violation of the laws of this State, knowingly and in bad faith, and
43 the trustee's actions directly caused the damages suffered by the
44 person. As used in this subsection, "trustee" includes a cotrustee, if
45 any, and a predecessor trustee.



~~[7-]~~ 8. If more than one transfer is made to a spendthrift trust:

(a) The subsequent transfer to the spendthrift trust must be disregarded for the purpose of determining whether a person may bring an action pursuant to subsection ~~[4]~~ 2 with respect to a prior transfer to the spendthrift trust; and

(b) Any distribution to a beneficiary from the spendthrift trust shall be deemed to have been made from the most recent transfer made to the spendthrift trust.

~~[8-]~~ 9. Notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity against the trustee of a spendthrift trust if, as of the date the action is brought, an action by a creditor with respect to a transfer to the spendthrift trust would be barred pursuant to this section.

~~[9-]~~ 10. For purposes of this section, if a trustee exercises his or her discretion or authority to distribute trust income or principal to or for a beneficiary of the spendthrift trust, by appointing the property of the original spendthrift trust in favor of a second spendthrift trust for the benefit of one or more of the beneficiaries as authorized by NRS 163.556, the time of the transfer for purposes of this section shall be deemed to have occurred on the date the settlor of the original spendthrift trust transferred assets into the original spendthrift trust, regardless of the fact that the property of the original spendthrift trust may have been transferred to a second spendthrift trust.

~~[10-]~~ 11. As used in this section:

(a) "Adviser" means any person, including, without limitation, an accountant, attorney or investment adviser, who gives advice concerning or was involved in the creation of, transfer of property to, or administration of the spendthrift trust or who participated in the preparation of accountings, tax returns or other reports related to the trust.

(b) "Creditor" has the meaning ascribed to it in subsection 4 of NRS 112.150.

Sec. 45. NRS 597.995 is hereby amended to read as follows:

597.995 1. Except as otherwise provided in subsection 3, an agreement which includes a provision which requires a person to submit to arbitration any dispute arising between the parties to the agreement must include specific authorization for the provision which indicates that the person has affirmatively agreed to the provision.

2. If an agreement includes a provision which requires a person to submit to arbitration any dispute arising between the parties to the agreement and the agreement fails to include the specific



1 authorization required pursuant to subsection 1, the provision is void
2 and unenforceable.

3 3. The provisions of this section do not apply to an agreement
4 that is a collective bargaining agreement. As used in this subsection,
5 “collective bargaining” has the meaning ascribed to it in
6 NRS 288.033.

7 *4. The provisions of this section do not apply to a provision in*
8 *a will or trust instrument that requires the arbitration of disputes*
9 *which is enforceable pursuant to NRS 164.930.*

10 **Sec. 46.** NRS 669A.082 is hereby amended to read as follows:
11 669A.082 “Fiduciary” means:

- 12 1. A person described in NRS 132.145;
- 13 2. A person described in NRS 163.554;
- 14 3. ~~[An excluded]~~ *A directed* fiduciary as ~~[defined]~~ *provided* in
15 NRS ~~[163.5539;]~~ *163.5548*; and
- 16 4. A trust protector as defined in NRS 163.5547,
17 ➔ who may not be acting as a fiduciary under the terms of the trust
18 instrument or will.

19 **Sec. 47.** NRS 163.5539 and 165.160 are hereby repealed.

TEXT OF REPEALED SECTIONS

NRS 163.5539 “Excluded fiduciary” defined. “Excluded fiduciary” means any fiduciary excluded from exercising certain powers under the instrument and those powers may be exercised by the settlor, custodial account owner, investment trust adviser, trust protector, trust committee or other person designated in the instrument.

NRS 165.160 Trust instrument.

1. Except as otherwise provided by a specific statute, federal law or common law, the terms of a trust instrument may expand, restrict, eliminate or otherwise vary the rights and interests of beneficiaries in any manner that is not illegal or against public policy, including, without limitation, specifying:

- (a) The right to be informed of the beneficiary’s interest for a period of time;
- (b) The grounds for removing a fiduciary;
- (c) The circumstances, if any, in which the fiduciary must diversify investments; and
- (d) A fiduciary’s powers, duties, standard of care, rights of indemnification and liability to persons whose interests arise from the trust instrument.



2. Nothing in this section shall be construed to:

- (a) Authorize the exculpation or indemnification of a fiduciary for the fiduciary's own willful misconduct or gross negligence; or
- (b) Preclude a court of competent jurisdiction from removing a fiduciary because of the fiduciary's willful misconduct or gross negligence.

3. The rule that statutes in derogation of the common law are to be strictly construed has no application to this section. This section must be liberally construed to give maximum effect to the principle of freedom of disposition and to the enforceability of trust instruments.

