

AB 286 Executive Summary
(04-15-19)

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Overview: This Executive Summary is intended to provide additional detail over and beyond the Legislative Counsel’s Digest.

This bill primarily amends Titles 12 and 13 of the Nevada Revised Statutes - Nevada’s laws pertaining to the administration of trusts and estates. This bill is intended to clarify the laws relating to estate planning, trust administration, probate and property transfers. The bill text was compiled by the Legislative Committee of the Probate and Trust Section of the State Bar of Nevada.

The bill text was circulated for review and comment to each of the state bar sections, and the proposed amendments received no objections. The Section’s proposals were unanimously approved by the Nevada State Bar Board of Governors for submission as a State Bar Probate and Trust Section sponsored bill.

Specific Amendments and Proposed Legislation:

Section 1: Amends NRS 19.0302 to correct oversight after 2015 legislative changes. NRS 145.040 was amended in 2015 to increase the value of an estate subject to summary administration from \$200,000 to \$300,000. This Amendment makes a corresponding amendment to NRS 19.0302(c) to bring the filing fee for a summary administration in line with the prior 2015 amendment at \$300,000.

Sections 1.5, 2, 3 and 7: Amend NRS 21.075, 21.090, 31.045 and NRS 115.050, respectively, to expressly clarify that the creditor protection for the homestead exemption amount of \$550,000 also applies to the proceeds payable to a defendant or spouse from the execution sale.

Section 4: Amends NRS 111.1031 by deleting subsection 5 (which provides a measuring period for the rule against perpetuities in terms measured in 21 years after death of the life in being), which is inconsistent with the 365-year perpetuity period enacted in the 2005 amendment to NRS 111.1031(1)(b).

Section 5: Amends NRS 111.1037 by including an express exemption to the statutory rule against perpetuities period for charitable trusts, which is consistent with Nevada Constitution Article 15, Section 4 (“No perpetuities shall be allowed except for eleemosynary purposes.”).

Section 6: Amends NRS 111.779 to specify that liability for nonprobate transfers under subsection 12(a)(1) is limited to a power of appointment actually exercised in favor of the decedent or decedent’s estate.

Section 8: Amends NRS 123.125 by replacing the term “current permissible beneficiaries” to “distribution beneficiaries as defined in NRS 163.415.” Also codifies common law by providing for a clear and convincing standard for the burden of proof necessary to transmute separate or community property.

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Section 9: Deleted by amendment.

Section 10: Amends NRS 134.160 to no longer exclude half-blood heirs from inheriting property from a decedent where property is derived from an uncommon ancestor. (Nevada is only one of three remaining states that distinguish between half-blood and full-blood for purpose of intestacy inheritance).

Sections 11 and 12: Amend NRS 136.010 and 136.090 to afford more flexibility for probate courts to determine appropriate venue for probate of resident decedents by vesting the court with discretion to exercise venue in circumstances similar to those for non-resident decedents.

Section 13: Amends NRS 136.240 to create a rebuttable presumption that a copy of a fully executed lost will that has been formally witnessed by two or more disinterested witnesses has not been revoked.

Sections 14 and 23: Overhaul Nevada's no-contest clause statutes NRS 137.005 (wills) and NRS 163.00195 (trusts) in the wake of the Nevada Supreme Court decision of In re ATS Trust (which effectively rendered Nevada's no-contest clause statutes unenforceable). Specific amendments include specifying that a safe harbor exemption only applies to a beneficiary that has enforceable rights under the trust and by providing requirements that a beneficiary must show safe harbor exemption for each violation of a no-contest clause. These amendments incorporate concepts from other jurisdictions such as New Hampshire (N.H. Rev. Stat. Ann. 551:22) in an attempt to provide the maximum enforcement as to a settlor's intent.

Section 15: Amends NRS 143.165 to specify the procedure for ex parte and preliminary restraining orders obtained in probate court to protect estate property.

Section 16: Amends NRS 146.020 to allow the probate court to set aside a decedent's homestead for the use of a surviving spouse and/or minor child(ren) in the initial petition for probate as opposed to requiring the spouse/child(ren) to wait until an inventory is filed.

Section 17-21 (generally): Amend the provisions of NRS 162B.105 (The Uniform Powers of Appointment Act) adopted in the 2017 legislative session to make it more compatible with existing Nevada law.

Section 17: Amends 162B.105 expand the definition to work with existing Nevada law to permit a non-Nevada resident to create or exercise a Nevada power of attorney in conjunction with a Nevada trust.

Section 18: Amends NRS 162B.200 to delete the requirement that in its current form requires that the instrument creating the power of appointment must also create a transfer of the appointive property. This provision has been criticized by a number of commentators as overly restrictive. To avoid unnecessary limits on planning opportunities under Nevada law, this requirement should be deleted in the manner indicated in the proposed changes below.

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Section 19: Amends NRS 162B.320 to remove unnecessary restrictions upon the exercise of a power of appointment and by allowing a nongeneral power to be exercised to create either a new general or nongeneral power of appointment in favor of a permissible appointee, and mirrors the approach taken to address this issue by Colorado, Virginia and Illinois.

Section 20: Amends NRS 162B.365 by removing a restriction that limits the revocation or amendment of a power of appointment to powers reserved in the instrument and permits such revocation or amendment unless expressly prohibited in the instrument granting or exercising the power.

Section 21: Amends 162B.510 to conform it to the exemptions under existing law found in NRS 21.090(1)(cc), which generally exempts from execution a power of appointment over trust assets regardless of whether the power has been exercised, and NRS 111.779(12)(a)(1), which exempts from creditor claims property transferred pursuant to a power of appointment exercised by a decedent unless it was exercisable in favor of the decedent or the decedent's estate. The proposed amended language brings NRS 162B.510 into harmony with these Nevada statutes.

Section 22, 25, 27-31: Add a new section to NRS Chapter 163 (Section 22) and makes associated amendments to refer to this section (Sections 25 and 27-31) for ex parte temporary restraining orders and preliminary injunctions in trust proceedings to protect trust property similar to those for estate proceedings found in 143.165.

Section 24: Amends NRS 163.004 to recognize that an irrevocable trust may reserve certain powers to the settlor or a third party, consistent with existing Nevada law.

Section 26: Amends NRS 163.115 to incorporate portions of Uniform Trust Code 706 that provides statutory grounds for the removal of a trustee and also affords the trustee some protection by affording the court discretion to award fees and costs against a beneficiary who attempts to remove a trustee in bad faith.

Section 32: Amends NRS 163.556 by deleting the obsolete provision of subsection 3(d) in decanting statutes and replace 3(d) with provisions allowing a retirement trust to continue qualification after decanting, and to clarify the definition of "second trust."

Section 33: Amends NRS 163.590 by permitting a settlor of a trust to make gifts of any trust property by reference to a statement or list in the trust instrument, where this power was previously limited to tangible personal property.

Section 34: Adds new section to NRS chapter 164 to reinstate a section applicable to intervivos trusts authorizing the payment of expenses for and compensation of a trustee, which was inadvertently deleted in the 2017 legislative session when NRS 153.070 was deleted as to testamentary trusts.

Section 35: Amends NRS 164.025 to provide a notice to creditors provision for claims against the settlor of an intervivos revocable trust in addition to the existing provisions for claims against the trust itself following the death of such settlor.

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Section 36: Amends NRS 164.038 to broaden the scope of Nevada’s virtual representation statute to include the holder of a power of appointment when binding persons whose interests are as permissible appointees or takers in default.

Section 37: Amends NRS 164.045 to eliminate language that may hinder a trust from moving from another from another jurisdiction to Nevada to and benefitting from Nevada’s favorable rule against perpetuities.

Section 38: Amends NRS 164.930 to provide that enforceable arbitration provisions in trust instruments may also apply to disputes involving settlors of intervivos trusts.

Sections 39-41: Amends NRS 166 to clarify the definition of Settlor to include any person contributing property to a spendthrift to the extent such transfer was not made for consideration.

Section 42: Amends NRS 166.020 to clarify the definition of spendthrift trust.

Section 43-44: Have been repealed (NRS 166.120 and 166.170 will not be amended).

Section 45: Amends NRS 597.995 to expressly note that arbitration provisions in a will or trust are governed by NRS 164.930 and not NRS 597.995.

Section 46: Amends NRS 669A.082 to update the definition language of directed fiduciary in defining the term “fiduciary.”

Section 47: repeals NRS 163.5539 and 165.160.