
SENATE BILL NO. 263—COMMITTEE ON JUDICIARY

MARCH 17, 2011

Referred to Committee on Judiciary

SUMMARY—Authorizes a court to establish the validity of a will or trust before the death of the testator or settlor. (BDR 12-182)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to estates; authorizing a court to establish the validity of a will or trust before the death of the testator or settlor; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, a will may be admitted to probate after the death of the
2 testator to establish the validity of the will and distribute the testator’s estate.
3 (Chapter 136 of NRS) This bill authorizes a court to establish the validity of a will
4 before the death of the testator. **Section 3** of this bill authorizes certain persons to
5 petition the court to determine that a will is valid and is subject only to subsequent
6 modification or revocation. **Section 21** of this bill provides that if the court declares
7 that a will is valid, the will must be admitted to probate upon request by certain
8 persons after the testator’s death, unless the testator modified or revoked the will
9 after such declaration by the court and before his or her death. **Section 22** of this
10 bill provides that the declaration of validity by the court is binding upon interested
11 persons.

12 This bill also authorizes a court to establish the validity of a trust before the
13 death of a settlor. **Section 32** of this bill authorizes certain persons to petition the
14 court to determine that a trust is valid and enforceable under its terms and is subject
15 only to subsequent modification, termination, revocation or reformation. **Section 46**
16 of this bill authorizes the court to declare that a trust is valid following a hearing on
17 the matter, and **section 47** of this bill provides that the declaration of validity by the
18 court is binding upon interested persons. **Section 50** of this bill specifies that no
19 person may bring an action to contest the validity of a trust if the court has declared
20 that the trust is valid.



* S B 2 6 3 *

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

1 **Section 1.** Chapter 136 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 24, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 24, inclusive, of this act,*
5 *unless the context otherwise requires, “future heirs” means*
6 *persons who would be entitled by intestate succession to the*
7 *property of the testator upon the death of the testator.*

8 **Sec. 3.** *The following persons may, before the death of the*
9 *testator, petition the court having jurisdiction to determine that the*
10 *testator’s will is valid and is subject only to subsequent*
11 *modification or revocation:*

12 1. *The testator.*

13 2. *A person nominated in the will to serve as a personal*
14 *representative.*

15 3. *A devisee named in the will.*

16 4. *Any other interested person.*

17 **Sec. 4.** *A petition filed pursuant to section 3 of this act must*
18 *be filed in the district court of:*

19 1. *The county where the testator is a resident; or*

20 2. *Any county in which any part of the testator’s estate is*
21 *located, if the testator is a nonresident.*

22 **Sec. 5.** 1. *A petition filed pursuant to section 3 of this act*
23 *must be signed by the petitioner or the attorney for the petitioner*
24 *and filed with the clerk of the court, who shall set the petition for*
25 *hearing.*

26 2. *The petitioner shall give notice of the hearing for the*
27 *period and in the manner provided in NRS 155.010 to:*

28 (a) *The future heirs of the testator and the devisees named in*
29 *the will;*

30 (b) *All persons nominated in the will as personal*
31 *representatives who are not petitioning;*

32 (c) *The testator, if applicable; and*

33 (d) *The Director of the Department of Health and Human*
34 *Services.*

35 3. *The notice given pursuant to subsection 2 must be*
36 *substantially in the form provided in NRS 155.020.*

37 **Sec. 6.** *A petition filed pursuant to section 3 of this act must*
38 *contain all the following:*

39 1. *The jurisdictional facts.*

40 2. *The character and estimated value of the property of the*
41 *estate.*

42 3. *The name and residence of the testator.*



1 4. *If applicable, the names and residences of the persons*
2 *nominated in the will to serve as personal representatives.*

3 5. *The names and residences of the future heirs, next of kin*
4 *and devisees of the testator, the age of any future heir, next of kin*
5 *or devisee who is a minor, and the relationship of the future heirs*
6 *and next of kin to the testator, so far as known to the petitioner.*

7 6. *The name of any devisee who is deceased.*

8 7. *A statement that:*

9 (a) *A copy of the will has been filed with the court, or that the*
10 *petitioner does not have access to a copy of the will because of the*
11 *circumstances set forth in section 9 of this act.*

12 (b) *The will is in writing.*

13 (c) *The will was signed by the testator, or was signed in the*
14 *testator's name by another person who was in the testator's*
15 *conscious presence and at the testator's direction.*

16 (d) *The will was executed with testamentary intent.*

17 (e) *The testator had testamentary capacity at the time the will*
18 *was executed.*

19 (f) *The testator was free from undue influence and duress and*
20 *executed the will in the exercise of his or her free will.*

21 (g) *The execution of the will was not the result of fraud or*
22 *mistake.*

23 (h) *The will has not been revoked or modified.*

24 (i) *The testator is familiar with the contents of the will.*

25 8. *If the will is a witnessed will, a statement that the will was*
26 *signed by at least two persons, each of whom signed within a*
27 *reasonable time after witnessing the signing of the will or the*
28 *testator's acknowledgement of the signature on the will.*

29 9. *If the will is an electronic will, a statement that the will:*

30 (a) *Is written, created and stored in an electronic record.*

31 (b) *Contains the date and the electronic signature of the*
32 *testator and includes at least one authentication which is*
33 *characteristic of the testator.*

34 (c) *Is created and stored in such a manner that:*

35 (1) *Only one authoritative copy exists;*

36 (2) *The authoritative copy is maintained and controlled by*
37 *the testator or a custodian designated by the testator in the*
38 *electronic will;*

39 (3) *Any attempted alteration of the authoritative copy is*
40 *readily identifiable; and*

41 (4) *Each copy of the authoritative copy is readily*
42 *identifiable as a copy that is not the authoritative copy.*

43 10. *If the will is a holographic will, a statement that the*
44 *signature and material portions of the will are in the testator's*
45 *handwriting.*



1 **Sec. 7. 1.** *A petitioner who files a petition pursuant to*
2 *section 3 of this act has the burden of establishing prima facie*
3 *proof of the execution of the will, and a person who opposes the*
4 *petition has the burden of establishing the lack of testamentary*
5 *intent or capacity, the presence of undue influence, fraud, duress*
6 *or mistake or the revocation of the will.*

7 **2.** *A party to the proceeding has the ultimate burden of*
8 *persuasion as to the matters for which he or she has the initial*
9 *burden of proof.*

10 **Sec. 8. 1.** *A district judge shall not preside over any*
11 *hearing relating to a petition filed pursuant to section 3 of this act*
12 *if the judge is:*

13 **(a)** *Interested as next of kin to the testator;*

14 **(b)** *A devisee under the will;*

15 **(c)** *Nominated as a personal representative or trustee in the*
16 *will; or*

17 **(d)** *A witness to the will.*

18 **2.** *If a district judge, who would otherwise be authorized to*
19 *act, is precluded from acting pursuant to subsection 1, or if the*
20 *judge is interested in any other manner, the judge shall:*

21 **(a)** *Transfer all proceedings in the matter of the validity of the*
22 *will to another judge of the same county who is not disqualified to*
23 *act; or*

24 **(b)** *Request a judge of another district to hear the proceeding*
25 *in the other county.*

26 **3.** *The judge to whom the matter is transferred pursuant to*
27 *subsection 2 or the other district judge shall hear the proceeding,*
28 *is vested with all the powers of the court and the disqualified judge*
29 *and retains jurisdiction as to all subsequent proceedings regarding*
30 *the testator's estate.*

31 **4.** *If, before the proceeding transferred pursuant to*
32 *subsection 3 is closed, another person becomes judge of the court*
33 *in which the proceeding was originally commenced who is not*
34 *disqualified to act pursuant to this section, and the causes for*
35 *which the proceeding was transferred no longer exist, any*
36 *interested person may have the proceeding returned to the judge*
37 *who succeeded the disqualified judge by filing a petition setting*
38 *forth these facts and moving the court to grant the petition. If*
39 *these facts are satisfactorily shown, the court must make an order*
40 *transferring the proceeding back to the judge who is not*
41 *disqualified.*

42 **Sec. 9. 1.** *If it is alleged in the petition filed pursuant to*
43 *section 3 of this act that the testator's will is in the possession of a*
44 *third person, and the court is satisfied that the allegation is*
45 *correct, an order must be issued and served upon the person*



1 *having possession of the will, requiring that person to produce the*
2 *will at a time to be named in the order.*

3 2. *Any person having possession of a will who neglects or*
4 *refuses to produce the will in obedience to an order issued*
5 *pursuant to subsection 1 may, by warrant from the court, be*
6 *committed to the county jail and be kept in close confinement until*
7 *the person produces the will. The court may make all other*
8 *necessary orders at chambers to enforce the production of the will.*

9 **Sec. 10.** 1. *Except as otherwise provided in subsection 2,*
10 *the clerk of the court shall issue a subpoena to any subscribing*
11 *witness to a will if the witness resides in the county.*

12 2. *A subpoena to a subscribing witness does not need to be*
13 *issued if the affidavit mentioned in section 14 of this act is filed*
14 *with the clerk.*

15 **Sec. 11.** 1. *At the time appointed, or at any other time to*
16 *which the hearing may be continued, upon proof being made by*
17 *affidavit or otherwise to the satisfaction of the court that notice*
18 *has been given as required by section 5 of this act, the court shall*
19 *proceed to hear the testimony in proof of the will.*

20 2. *All witnesses who appear and are sworn shall testify orally.*

21 **Sec. 12.** 1. *If it appears that there are minors or unborn*
22 *members of a class who are interested, or if it appears there are*
23 *other interested persons who reside outside the county and are*
24 *unrepresented, the court may, whether there is a contest or not,*
25 *appoint an attorney for them.*

26 2. *If a person for whom an attorney has been appointed*
27 *pursuant to subsection 1 retains counsel and notifies the court of*
28 *the retention, the court shall enter an order relieving the court-*
29 *appointed attorney of further obligation to represent the person.*

30 **Sec. 13.** 1. *If no person appears to contest the validity of a*
31 *will at the time of the hearing on the petition filed pursuant to*
32 *section 3 of this act, the court may declare the validity of the will*
33 *on the testimony of only one of the subscribing witnesses, if that*
34 *testimony shows that the will was executed in all particulars as*
35 *required by law, and that the testator was of sound mind and had*
36 *attained the age of 18 years at the time the will was executed.*

37 2. *An ex parte affidavit of the witness, showing that the will*
38 *was executed in all particulars as required by law, and that the*
39 *testator was of sound mind and had attained the age of 18 years at*
40 *the time of its execution, must be received in evidence and has the*
41 *same force and effect as if the witness were present and testified*
42 *orally.*

43 **Sec. 14.** 1. *Any or all of the attesting witnesses to a will*
44 *may, at the request of any of the persons qualified to petition the*
45 *court pursuant to section 3 of this act, make and sign an affidavit*



1 *stating such facts as a witness would be required to testify to in*
2 *court to prove the will. The sworn statement of any witness so*
3 *taken must be accepted by the court as if the statement had been*
4 *taken before the court.*

5 *2. The affidavit described in subsection 1 may be*
6 *substantially in the form set forth in NRS 133.050.*

7 **Sec. 15.** *1. If it appears to the court that a will cannot be*
8 *proven as otherwise provided by law because one or more or all*
9 *the subscribing witnesses to the will, at the time of the hearing on*
10 *the petition filed pursuant to section 3 of this act, are dead or*
11 *mentally or physically incapable of testifying or otherwise*
12 *unavailable, the court may declare the validity of the will upon the*
13 *testimony in person, by deposition or by affidavit of at least two*
14 *credible disinterested persons that the signature to the will is*
15 *genuine, or upon other sufficient proof that the signature is*
16 *genuine.*

17 *2. The provisions of subsection 1 do not preclude the court, in*
18 *its discretion, from additionally requiring the testimony of any*
19 *available subscribing witness in person, by deposition or by*
20 *affidavit, or proof of such other pertinent facts and circumstances*
21 *as the court deems necessary to declare the validity of the will.*

22 **Sec. 16.** *1. If the will of a person is detained beyond the*
23 *jurisdiction of this State, in a court of any other state, country or*
24 *jurisdiction and cannot be produced for the hearing on the*
25 *petition filed pursuant to section 3 of this act, a copy of the will*
26 *may be admitted in lieu thereof, and has the same force and effect*
27 *as would be required if the original will were produced.*

28 *2. Unless otherwise ordered by the court, a subscribing*
29 *witness may testify in person, by deposition or by affidavit with*
30 *respect to a copy of the executed will, and with respect to the*
31 *handwriting of the affiant as a witness, or the handwriting of the*
32 *testator or another witness, in the same way as he or she would if*
33 *the original will were available.*

34 **Sec. 17.** *If a will is lost by accident or destroyed by fraud*
35 *without the knowledge of the testator, the court may take proof of*
36 *the execution and validity of the will and establish it, after notice*
37 *is given to all persons, as prescribed for proof of wills in other*
38 *cases.*

39 **Sec. 18.** *An electronic or holographic will may be proved by*
40 *authentication satisfactory to the court.*

41 **Sec. 19.** *If the will is in a foreign language, the court shall*
42 *certify to a correct translation thereof into English, and the*
43 *certified translation must be recorded in lieu of the original.*

44 **Sec. 20.** *A copy of the will and order admitting it to probate,*
45 *certified by the clerk in whose custody the will may be, must be*



1 *received in evidence and be as effectual in all cases as the original*
2 *will would be if proved.*

3 **Sec. 21.** 1. *After the hearing on the petition filed pursuant*
4 *to section 3 of this act, the court may declare a will to be valid and*
5 *may make other findings of fact and conclusions of law that are*
6 *appropriate under the circumstances.*

7 2. *After the death of the testator, unless the will is modified or*
8 *revoked pursuant to section 23 of this act after the declaration of*
9 *the validity of the will, the will has full legal effect as the*
10 *instrument of the disposition of the estate of the testator, and*
11 *the will must be admitted to probate upon request by any of the*
12 *persons listed in NRS 136.070.*

13 **Sec. 22.** *A person, whether or not the person is known or*
14 *born at the time of a proceeding under sections 2 to 24, inclusive,*
15 *of this act, including a person who is represented by another*
16 *person under section 12 of this act, is bound by the declaration*
17 *under section 21 of this act even if by the time of the death of the*
18 *testator the representing person has died or would no longer be*
19 *able to represent the person in the proceeding under sections 2 to*
20 *24, inclusive, of this act.*

21 **Sec. 23.** *After a declaration of the validity of a will pursuant*
22 *to section 21 of this act, a testator may:*

23 1. *Modify the will by a later will or codicil executed according*
24 *to the laws of this State or another state.*

25 2. *Revoke the will pursuant to NRS 133.110 to 133.130,*
26 *inclusive, or any other applicable law.*

27 **Sec. 24.** 1. *The following documents under sections 2 to 24,*
28 *inclusive, of this act must be available for public inspection:*

29 (a) *A notice of the filing of a petition.*

30 (b) *A summary of all formal proceedings.*

31 (c) *A dispositional order or a modification or termination of a*
32 *dispositional order relating to a proceeding under sections 2 to 24,*
33 *inclusive of this act.*

34 2. *Except as provided in subsections 3 and 4, all other*
35 *information contained in the court records relating to a*
36 *proceeding under sections 2 to 24, inclusive, of this act is*
37 *confidential.*

38 3. *The records that are confidential under subsection 2 may*
39 *be made available to:*

40 (a) *The petitioner and the petitioner's attorney.*

41 (b) *Interested persons who have appeared in the proceedings.*

42 (c) *Interested persons who have otherwise submitted to the*
43 *jurisdiction of the court.*

44 (d) *The attorneys, guardians and conservators of the interested*
45 *persons.*



1 (e) *The judge hearing or reviewing the matter.*

2 (f) *A member of the clerical or administrative staff of the court*
3 *if access is essential for authorized internal administrative*
4 *purposes.*

5 4. *For good cause shown, the court may order confidential*
6 *records pursuant to subsection 2 to be made available to a person*
7 *who is not listed in subsection 3.*

8 **Sec. 25.** NRS 136.070 is hereby amended to read as follows:

9 136.070 *Unless a will has been declared valid by a court of*
10 *competent jurisdiction pursuant to sections 2 to 24, inclusive, of*
11 *this act:*

12 1. A personal representative or devisee named in ~~fa~~ *the* will,
13 or any other interested person, may, at any time after the death of
14 the testator, petition the court having jurisdiction to have the will
15 proved, whether the will is in the possession of that person or not, or
16 is lost or destroyed, or is beyond the jurisdiction of the State.

17 2. A personal representative named in ~~fa~~ *the* will, though not
18 in possession of the will, may present a petition to the district court
19 having jurisdiction, requesting that the person in possession of the
20 will be required to produce it so that it may be admitted to probate
21 and letters may be issued.

22 **Sec. 26.** Chapter 137 of NRS is hereby amended by adding
23 thereto a new section to read as follows:

24 *If a will has been declared valid by a court of competent*
25 *jurisdiction pursuant to sections 2 to 24, inclusive, of this act,*
26 *unless the will has been modified or revoked pursuant to section*
27 *23 of this act after the declaration of the validity of the will:*

28 1. *The provisions of this chapter do not apply to the will; and*

29 2. *No person may contest the will pursuant to the provisions*
30 *of this chapter.*

31 **Sec. 27.** NRS 153.031 is hereby amended to read as follows:

32 153.031 1. A trustee or beneficiary may petition the court
33 regarding any aspect of the affairs of the trust, including:

34 (a) Determining the existence of the trust;

35 (b) Determining the construction of the trust instrument;

36 (c) Determining the existence of an immunity, power, privilege,
37 right or duty;

38 (d) Determining the validity of a provision of the trust ~~fa~~ ,
39 *unless the trust has been declared valid by a court of competent*
40 *jurisdiction pursuant to section 46 of this act;*

41 (e) Ascertaining beneficiaries and determining to whom
42 property is to pass or be delivered upon final or partial termination
43 of the trust, to the extent not provided in the trust instrument;

44 (f) Settling the accounts and reviewing the acts of the trustee,
45 including the exercise of discretionary powers;



- 1 (g) Instructing the trustee;
- 2 (h) Compelling the trustee to report information about the trust
- 3 or account, to the beneficiary;
- 4 (i) Granting powers to the trustee;
- 5 (j) Fixing or allowing payment of the trustee's compensation, or
- 6 reviewing the reasonableness of the trustee's compensation;
- 7 (k) Appointing or removing a trustee;
- 8 (l) Accepting the resignation of a trustee;
- 9 (m) Compelling redress of a breach of the trust;
- 10 (n) Approving or directing the modification or termination of
- 11 the trust;
- 12 (o) Approving or directing the combination or division of trusts;
- 13 (p) Amending or conforming the trust instrument in the manner
- 14 required to qualify the estate of a decedent for the charitable estate
- 15 tax deduction under federal law, including the addition of
- 16 mandatory requirements for a charitable-remainder trust;
- 17 (q) Compelling compliance with the terms of the trust or other
- 18 applicable law; and
- 19 (r) Permitting the division or allocation of the aggregate value of
- 20 community property assets in a manner other than on a pro rata
- 21 basis.

22 2. A petition under this section must state the grounds of the
23 petition and the name and address of each interested person,
24 including the Attorney General if the petition relates to a charitable
25 trust, and the relief sought by the petition. Except as otherwise
26 provided in this chapter, the clerk shall set the petition for hearing
27 and the petitioner shall give notice for the period and in the manner
28 provided in NRS 155.010. The court may order such further notice
29 to be given as may be proper.

30 3. If the court grants any relief to the petitioner, the court may,
31 in its discretion, order any or all of the following additional relief if
32 the court determines that such additional relief is appropriate to
33 redress or avoid an injustice:

- 34 (a) Order a reduction in the trustee's compensation.
- 35 (b) Order the trustee to pay to the petitioner or any other party
- 36 all reasonable costs incurred by the party to adjudicate the affairs of
- 37 the trust pursuant to this section, including, without limitation,
- 38 reasonable attorney's fees. The trustee may not be held personally
- 39 liable for the payment of such costs unless the court determines that
- 40 the trustee was negligent in the performance of or breached his or
- 41 her fiduciary duties.



1 **Sec. 28.** Chapter 164 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 29 to 50, inclusive, of this
3 act.

4 **Sec. 29.** *As used in sections 29 to 50, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 30 and 31 of this act have the meanings ascribed to*
7 *them in those sections.*

8 **Sec. 30.** *“Future heirs” means persons who would be entitled*
9 *by intestate succession to the property of the settlor upon the death*
10 *of the settlor.*

11 **Sec. 31.** *“Party in interest” means:*

12 1. *If the trust is revocable and the settlor is incapacitated, the*
13 *legal representative under applicable law or the agent of the settlor*
14 *under a durable power of attorney.*

15 2. *If the trust is irrevocable:*

16 (a) *Each trustee serving at the time.*

17 (b) *Each beneficiary entitled to receive a mandatory*
18 *distribution of income or principal from a trust or, if a beneficiary*
19 *entitled to receive a mandatory distribution of income or principal*
20 *from a trust is not 19 years of age or older or is incapacitated, the*
21 *legal representative of the beneficiary under applicable law or the*
22 *agent of the vested remainder beneficiary under a durable power of*
23 *attorney.*

24 (c) *Each vested remainder beneficiary in existence at the time*
25 *or, if a vested remainder beneficiary is not 19 years of age or older*
26 *or is incapacitated, the legal representative of the vested remainder*
27 *beneficiary under applicable law or the agent of the vested*
28 *remainder beneficiary under a durable power of attorney.*

29 **Sec. 32.** 1. *The following persons may, before the death of*
30 *the settlor, petition the court having jurisdiction to determine that*
31 *the settlor’s trust is valid and enforceable under its terms and is*
32 *subject only to subsequent modification, termination, revocation*
33 *or reformation:*

34 (a) *The settlor.*

35 (b) *A trustee of the trust, if the trustee is a qualified person.*

36 2. *As used in this section, “qualified person” means:*

37 (a) *A person who, except for brief intervals, military service or*
38 *attendance at an educational or training institution, or for*
39 *absences for good cause shown, resides in this State, whose true*
40 *and permanent home is in this State, who does not have a present*
41 *intention of moving from this State and who has the intention of*
42 *returning to this State when away.*

43 (b) *A trust company which is organized under the laws of this*
44 *State and which has its principal place of business in this State.*



1 (c) *A bank that is organized under the laws of this State, or a*
2 *national banking association that is organized under the laws of*
3 *the United States, if the bank or national banking association*
4 *possesses and exercises trust powers and has its principal place of*
5 *business in this State.*

6 **Sec. 33.** *A petition filed pursuant to section 32 of this act*
7 *must be filed in the district court of:*

8 1. *The county where the trust is registered; or*

9 2. *If the trust is not registered in this State:*

10 (a) *Any county in this State where the trust could have been*
11 *properly registered; or*

12 (b) *The location established by the rules of court.*

13 **Sec. 34.** 1. *A petition filed pursuant to section 32 of this act*
14 *must be signed by the petitioner or the attorney for the petitioner*
15 *and filed with the clerk of court, who shall set the petition for*
16 *hearing.*

17 2. *The petitioner shall give notice of the hearing for the*
18 *period and in the manner provided in NRS 155.010 to the spouse,*
19 *children and future heirs of the settlor.*

20 3. *In addition to the notice required by subsection 2, the*
21 *petitioner shall notify the settlor, if applicable, and the parties in*
22 *interest for the period and in the manner provided in NRS*
23 *155.010. Notice may also be given to other persons.*

24 **Sec. 35.** *A petition filed pursuant to section 32 of this act*
25 *must contain all the following:*

26 1. *The name and residence of the settlor.*

27 2. *The names and residences of the spouse, children and*
28 *future heirs of the settlor, and any parties in interest.*

29 3. *The ages of any of the children and future heirs of the*
30 *settlor and any parties in interest who are minors, so far as known*
31 *or ascertainable with reasonable diligence by the petitioner.*

32 4. *A statement that:*

33 (a) *A copy of the trust has been filed with the court, or that the*
34 *petitioner does not have access to a copy of the trust because of the*
35 *circumstances set forth in section 38 of this act.*

36 (b) *The trust is in writing.*

37 (c) *The trust was signed by the settlor.*

38 (d) *The trust was executed with the intent that it be*
39 *enforceable in accordance with the terms contained therein.*

40 (e) *The settlor had the legal capacity to enter into and establish*
41 *the trust.*

42 (f) *The settlor was free from undue influence and duress and*
43 *executed the trust in the exercise of free will.*

44 (g) *The execution of the trust was not the result of fraud or*
45 *mistake.*



1 (h) *The trust has not been revoked or modified.*

2 (i) *The settlor is familiar with the contents of the trust.*

3 5. *If the trust is an electronic trust, a statement that the trust:*

4 (a) *Is written, created and stored in an electronic record;*

5 (b) *Contains the electronic signature of the settlor; and*

6 (c) *Meets the requirements set forth in this chapter for a valid*
7 *trust.*

8 **Sec. 36.** 1. *A petitioner who files a petition pursuant to*
9 *section 32 of this act has the burden of establishing prima facie*
10 *proof of the execution of the trust, and a person who opposes the*
11 *petition has the burden of establishing the lack of intent or*
12 *capacity, the presence of undue influence, fraud, duress or*
13 *mistake or the revocation of the trust.*

14 2. *A party to the proceeding has the ultimate burden of*
15 *persuasion as to the matters for which he or she has the initial*
16 *burden of proof.*

17 **Sec. 37.** 1. *A district judge shall not preside over any*
18 *hearing relating to a petition filed pursuant to section 32 of this*
19 *act if the judge is:*

20 (a) *Interested as next of kin to the settlor;*

21 (b) *A beneficiary under the trust; or*

22 (c) *A trustee of the trust.*

23 2. *If a district judge, who would otherwise be authorized to*
24 *act, is precluded from acting pursuant to subsection 1, or if the*
25 *judge is interested in any other manner, the judge shall:*

26 (a) *Transfer all proceedings in the matter of the validity of the*
27 *trust to another judge of the same county who is not disqualified to*
28 *act; or*

29 (b) *Request a judge of another district to hear the proceeding*
30 *in the other county.*

31 3. *The judge to whom the matter is transferred pursuant to*
32 *subsection 2 or the other district judge shall hear the proceeding*
33 *and is vested with all the powers of the court and the disqualified*
34 *judge and retains jurisdiction as to all subsequent proceedings*
35 *regarding the settlor's trust.*

36 4. *If, before the proceeding transferred pursuant to*
37 *subsection 3 is closed, another person becomes judge of the court*
38 *in which the proceeding was originally commenced who is not*
39 *disqualified to act pursuant to this section, and the causes for*
40 *which the proceeding was transferred no longer exist, any*
41 *interested person may have the proceeding returned to the judge*
42 *who succeeded the disqualified judge by filing a petition setting*
43 *forth these facts and moving the court to grant the petition. If*
44 *these facts are satisfactorily shown, the court must make an order*



1 *transferring the proceeding back to the judge who is not*
2 *disqualified.*

3 **Sec. 38.** 1. *If it is alleged in the petition filed pursuant to*
4 *section 32 of this act that the settlor's trust is in the possession of a*
5 *third person, and the court is satisfied that the allegation is*
6 *correct, an order must be issued and served upon the person*
7 *having possession of the trust, requiring that person to produce*
8 *the trust at a time to be named in the order.*

9 2. *Any person having possession of a trust who neglects or*
10 *refuses to produce the trust in obedience to an order issued*
11 *pursuant to subsection 1 may, by warrant from the court, be*
12 *committed to the county jail and be kept in close confinement until*
13 *the person produces the trust. The court may make all other*
14 *necessary orders at chambers to enforce the production of the*
15 *trust.*

16 **Sec. 39.** 1. *At the time appointed, or at any other time to*
17 *which the hearing may be continued, upon proof being made by*
18 *affidavit or otherwise to the satisfaction of the court that notice*
19 *has been given as required by section 34 of this act, the court shall*
20 *proceed to hear the testimony in proof of the trust.*

21 2. *All witnesses who appear and are sworn shall testify orally.*

22 **Sec. 40.** 1. *If it appears that there are minors or unborn*
23 *members of a class who are interested, or if it appears there are*
24 *other interested persons who reside outside the county and are*
25 *unrepresented, the court may, whether there is a contest or not,*
26 *appoint an attorney for them.*

27 2. *If a person for whom an attorney has been appointed*
28 *pursuant to subsection 1 retains counsel and notifies the court of*
29 *the retention, the court shall enter an order relieving the court-*
30 *appointed attorney of further obligation to represent the person.*

31 **Sec. 41.** *If the trust of a person is detained beyond the*
32 *jurisdiction of this State, in a court of any other state, country or*
33 *jurisdiction, and cannot be produced for the hearing on the*
34 *petition filed pursuant to section 32 of this act, a copy of the trust*
35 *may be admitted in lieu thereof and has the same force and effect*
36 *as would be required if the original trust were produced.*

37 **Sec. 42.** *If a trust is lost by accident or destroyed by fraud*
38 *without the knowledge of the settlor, the court may take proof of*
39 *the execution and validity of the trust and establish it, after notice*
40 *is given to all persons, as prescribed for proof of trusts in other*
41 *cases.*

42 **Sec. 43.** *An electronic trust may be proved by authentication*
43 *satisfactory to the court.*



1 **Sec. 44.** *If the trust is in a foreign language, the court shall*
2 *certify to a correct translation thereof into English, and the*
3 *certified translation must be recorded in lieu of the original.*

4 **Sec. 45.** *A copy of the trust and order declaring its validity,*
5 *certified by the clerk of the court in whose custody the trust may*
6 *be, must be received in evidence and be as effectual in all cases as*
7 *the original trust would be if proved.*

8 **Sec. 46.** *After the hearing on the petition filed pursuant to*
9 *section 32 of this act, the court may declare a trust to be valid and*
10 *may make other findings of fact and conclusions of law that are*
11 *appropriate under the circumstances.*

12 **Sec. 47.** *A person, whether or not the person is known or*
13 *born at the time of a proceeding under sections 29 to 50, inclusive,*
14 *of this act, including a person who is represented by another*
15 *person under section 40 of this act, is bound by the declaration*
16 *under section 46 of this act.*

17 **Sec. 48.** *After a declaration of the validity of a trust under*
18 *section 46 of this act, a settlor may modify, terminate, revoke or*
19 *reform the trust under any applicable law.*

20 **Sec. 49.** *1. The following documents under sections 29 to*
21 *50, inclusive, of this act must be available for public inspection:*

22 *(a) A notice of the filing of a petition.*

23 *(b) A summary of all formal proceedings.*

24 *(c) A dispositional order or a modification or termination of a*
25 *dispositional order relating to a proceeding under sections 29 to*
26 *50, inclusive, of this act.*

27 *2. Except as otherwise provided in subsections 3 and 4, all*
28 *other information contained in the court records relating to a*
29 *proceeding under sections 29 to 50, inclusive, of this act is*
30 *confidential.*

31 *3. The records that are confidential under subsection 2 may*
32 *be made available to:*

33 *(a) The petitioner and the petitioner's attorney.*

34 *(b) Interested persons who have appeared in the proceedings.*

35 *(c) Interested persons who have otherwise submitted to the*
36 *jurisdiction of the court.*

37 *(d) The attorneys, guardians and conservators of the interested*
38 *persons.*

39 *(e) The judge hearing or reviewing the matter.*

40 *(f) A member of the clerical or administrative staff of the court*
41 *if access is essential for authorized internal administrative*
42 *purposes.*

43 **4.** *For good cause shown, the court may order confidential*
44 *records pursuant to subsection 2 to be made available to a person*
45 *who is not listed in subsection 3.*



1 **Sec. 50.** *No person may bring an action to contest the validity*
2 *of a trust if the trust has been declared valid by a court of*
3 *competent jurisdiction pursuant to sections 29 to 50, inclusive, of*
4 *this act.*

5 **Sec. 51.** NRS 164.021 is hereby amended to read as follows:

6 164.021 1. When a revocable trust becomes irrevocable
7 because of the death of a settlor or by the express terms of the trust,
8 the trustee may, within 90 days after the trust becomes irrevocable,
9 provide notice to any beneficiary of the irrevocable trust, any heir of
10 the settlor or to any other interested person.

11 2. The notice provided by the trustee must contain:

12 (a) The identity of the settlor of the trust and the date of
13 execution of the trust instrument;

14 (b) The name, mailing address and telephone number of any
15 trustee of the trust;

16 (c) Any provision of the trust instrument which pertains to the
17 beneficiary or notice that the heir or interested person is not a
18 beneficiary under the trust;

19 (d) Any information required to be included in the notice
20 expressly provided by the trust instrument; and

21 (e) A statement set forth in a separate paragraph, in 12-point
22 boldface type or an equivalent type which states: "You may not
23 bring an action to contest the trust more than 120 days from the date
24 this notice is served upon you ~~[.]~~ *or if the trust was declared valid*
25 *by a court of competent jurisdiction pursuant to sections 29 to 50,*
26 *inclusive, of this act before the death of the settlor of the trust."*

27 3. The trustee shall serve the notice pursuant to the provisions
28 of NRS 155.010.

29 4. No person upon whom notice is served pursuant to this
30 section may bring an action to contest the validity of the trust ~~[more]~~
31 :

32 (a) *More* than 120 days from the date the notice is served upon
33 the person, unless the person proves that he or she did not receive
34 actual notice ~~[.]~~; *or*

35 (b) *If the trust has been declared valid by a court of competent*
36 *jurisdiction pursuant to sections 29 to 50, inclusive, of this act.*

