

HOUSE BILL REPORT

HB 2388

As Reported By House Committee On:

Law & Justice

Title: An act relating to probate, trust, and estate law.

Brief Description: Regulating probate, trusts, and estates.

Sponsors: Representatives Sheahan, Constantine, Lambert and Costa.

Brief History:

Committee Activity:

Law & Justice: 1/20/98, 2/6/98 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Robertson and Sherstad.

Minority Report: Do not pass. Signed by 1 member: Representative Mulliken.

Staff: Bill Perry (786-7123).

Background:

NONPROBATE ASSETS

Nonprobate assets are rights or interests of a person that pass on his or her death pursuant to a written instrument or arrangement other than the person's will. An example of a nonprobate asset is a joint bank account with the right of survivorship. Such an account provides by its own terms that when an owner of the account dies, the surviving owners acquire the account. In order to change this arrangement, an owner must change the account itself, presumably by closing it. The transfer of ownership provided for by such an account cannot be changed by the owner's will.

When a person wishes to change the disposition of his or her assets, such a change is relatively easy with respect to assets that pass pursuant to a will. Particularly in the case

of a person on his or her deathbed, however, changing the disposition of a nonprobate asset may be more difficult. It has been suggested that people sometimes do not appreciate the significance of this potential difficulty until it is too late. For instance, a person may open a joint account with right of survivorship, primarily for convenience while the person is alive, and without intending or contemplating the effect such an account may have on the disposition of the person's estate when he or she dies.

TECHNICAL EFFECTIVE DATE CORRECTION

In 1997, the Legislature made several changes to the probate code. As a part of these changes, portions of the old code were repealed as of the effective date of the act, which was July 27, 1997. However, the new act's provisions to replace some of these repealed sections did not take effect until January 1, 1998. As a result, for a period of months there has been uncertainty about the coverage of the probate code in some situations.

UNIFORM TRANSFERS TO MINORS ACT

The Uniform Transfers to Minors Act provides a mechanism for transferring property to a custodian to be held and managed for the benefit of a minor. The document that provides for such a transfer is to identify the custodian. Some financial institutions have taken the position that the custodian must be identified directly and that the document may not provide for a person to pick the custodian at the happening of some future event.

INTERNAL REVENUE CODE CHANGES

The federal tax code is regularly changed by Congress. Many of the provisions in the state probate code reference provisions in the federal law. In order to keep the references current, it is necessary periodically to update the references in the state law.

Summary of Substitute Bill:

NONPROBATE ASSETS

Upon the death of the owner of a nonprobate asset, if the asset is specifically disposed of under the owner's will, the asset belongs to the beneficiary named in the will. This testamentary disposition controls notwithstanding prior designation of a different beneficiary in the documents relating to the nonprobate asset. A designation made after the date of the will, however, negates a disposition under the will.

Various limitations are placed on the ability to dispose of nonprobate assets under a will. Any disposition is subject to community property rights. Certain nonprobate assets are also specifically excluded. These excluded assets are: interests passing under a community property agreement; interests in real property passing under a joint tenancy with right of survivorship; interests passing under a community property agreement; and

individual retirement accounts. One type of nonprobate asset, credit union accounts, do not become subject to testamentary disposition until July 1, 1999.

The holder of a nonprobate asset who does not have actual notice of a testamentary disposition may rely on the terms of the nonprobate asset arrangement itself. The personal representative of the deceased or a beneficiary under the will may give notice to the holder of the nonprobate asset and to the beneficiary who was designated outside of the will. A specific written statutory notice form is provided. The notice may be given any time between the death of the owner and the closing of the estate. The notice informs the holder of the asset that the asset is not to be disposed of except at the direction of the personal representative. The personal representative is under no duty to give such notice. The personal representative or testamentary beneficiary may petition the superior court for an order declaring that the testamentary beneficiary is entitled to the nonprobate asset. Such a petition must be filed before the earlier of six months after admission of the will to probate or one year after the decedent's death.

If the holder of an asset has actual knowledge of a dispute among potential beneficiaries of the asset, or if the holder is uncertain as to who is entitled to the asset, the holder may refuse to transfer the asset until all beneficiaries have consented to the transfer or a court has ordered the transfer.

The owner of a nonprobate asset may waive his or her right to dispose of the asset by will.

TECHNICAL EFFECTIVE DATE CORRECTION

Provisions of the probate code repealed in 1997 are reinstated for the period from July 27, 1997, through December 31, 1997.

UNIFORM TRANSFERS TO MINORS ACT

Provisions of the Uniform Transfers to Minors Act are clarified to explicitly allow designation of a person who is to pick a custodian at a later date. Explicit provision is also made for designating more than one minor, or a class of minors, as beneficiaries of a transfer.

INTERNAL REVENUE CODE CHANGES

References to the federal tax law are updated to reflect recent amendments to the federal law.

Substitute Bill Compared to Original Bill: The substitute makes several technical changes and delays the applicability of the act with respect to credit unions until July 1, 1999.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Sections 101 through 116, and 118 take effect January 1, 1999; and Sections 117, 201 through 205, 301, 401, and 504 take effect immediately.

Testimony For: None.

Testimony Against: None.

Testified: None.