

HOUSE BILL ANALYSIS

SSB 5110

Title: An act relating to probate.

Brief Description: Updating probate provisions.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Johnson and Roach).

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Bill Perry (786-7123).

Background: The probate code governs the disposition of a person's estate upon his or her death. The code contains a wide variety of procedural and substantive provisions relating to this general subject.

"Probate" is the administration of dead person's estate under the supervision of a court. The probate code covers estates whether or not the decedent has left a will. However, not all estates need to go through probate. Community property agreements can transfer property to a surviving spouse without probate involvement, and certain "non-probate" assets may also be transferred without probate.

Probate provides procedures for transferring a decedent's property and for protecting various potentially competing interests in that property. These interests may be held by family members, joint owners, creditors, and taxing authorities.

Probate itself involves court supervision of the following processes:

- o Appointing a personal representative who is responsible for taking charge of the property of the estate and administering its distribution;
- o Establishing the validity of the decedent's will, if there is one;
- o Notifying heirs and beneficiaries of the decedent's estate;
- o Notifying the creditors of the decedent;
- o Filing an inventory of the decedent's estate; and
- o Demonstrating the solvency of the estate.

After completing these steps, the personal representative generally can administer the estate without further court approval. Administration of the estate may include appraising property, investing and managing assets, paying creditors and taxes owed

by the estate, filing tax returns, and transferring property to the heirs and beneficiaries.

The Legislature has periodically updated the probate code to reflect or accommodate changes in practice, court decisions, or federal law. Over the past several years, a task force of the state bar association has been working on revisions to the code. Previous suggested revisions by the task force were adopted by the Legislature in 1993 and 1994. The latest areas of the probate code to receive attention from the task force include provisions relating to creditors' claims, inventory and appraisal, family support, and nonintervention powers.

CREDITORS' CLAIMS.

In response to a 1988 U.S. Supreme Court decision, *Tulsa Professional Collection Services, Inc. v. Pope*, the Legislature modified portions of the probate code dealing with notice to creditors of an estate.

The code now requires the personal representative to publish a general notice to creditors once a week for three weeks in the county in which the probate is taking place. The code also requires that the personal representative of an estate must use "reasonable diligence" to identify "reasonably ascertainable" creditors of the deceased and to give actual notice of claim filing requirements to any creditors who are known or identified. Presumptions are provided regarding what efforts by a personal representative constitute "reasonable diligence." Various time periods apply regarding the giving of notice to a creditor, the type of notice given, and the creditor's right to file a claim against the estate. Generally, a known creditor's claim is cut off if the creditor has been given actual notice within four months of the personal representative publishing the general notice, and the creditor has failed to file the claim within 30 days of receiving the actual notice. Actual notice may be by mail or personal service. For other creditors, claims are cut off 18 months after the personal representative publishes notice. The exact meaning of these requirements has been questioned. It is unclear whether the actual notice provision applies to creditors who were "reasonably ascertainable," but who were not in fact identified by the personal representative within the four-month period.

INVENTORY AND APPRAISAL.

Generally, a personal representative must, within three months of being appointed, provide the court with an inventory of all the property of the estate. The inventory must include all property in the possession of or known to the personal representative. Additionally, whenever any property not mentioned in the initial inventory becomes known to the personal representative, it must be added to the inventory and must be appraised.

FAMILY SUPPORT.

Generally, the "homestead" of a person is exempt from creditors' claims. The homestead is an owner's equity in his or her residence up to a maximum value of \$30,000. If no homestead exemption has been claimed by a deceased married person, the surviving spouse may, as part of the probate process, claim an award of up to \$30,000 from the estate in lieu of a homestead. Before allowing the award, the court must deduct from the estate the expenses of the decedent's funeral, any last illness, and the administration of the estate. The award is generally exclusive of taxes, assessments, and liens against the property. An award in lieu of homestead is deducted from the remainder of the estate's probate assets, which are then administered through probate. Although the statutes are unclear on the question, the state supreme court has held that an award in lieu of homestead may be made from a decedent's community or separate property. *Estate of Ratcliff*.

Under some circumstances, an award in lieu of homestead may be denied or reduced. An award may not be made to a spouse who has feloniously killed the decedent, and the court has discretion whether to make the award to the surviving spouse if the decedent has children from another marriage, or if the decedent has abandoned minor children or has not provided for them, or if the surviving spouse or minor children will receive life insurance proceeds or other non-probate assets.

If a person dies without a surviving spouse, but with surviving minor children, the court is to set aside an amount of up to \$30,000 for the care and support of the children.

In addition, the court may make "further reasonable allowance of cash" from the decedent's estate for the maintenance of the surviving family during probate.

NONINTERVENTION POWERS.

The personal representative of an estate may, under some circumstances, obtain "nonintervention" powers. Many wills provide for the granting of these powers. Generally, nonintervention powers allow the personal representative to proceed with the administration of the estate without the direct involvement of the court. The law is unclear about whether these powers can continue in the case of an estate that becomes insolvent. The court is to remove the powers if a petition seeking removal is filed because of insolvency, but there is no express provision requiring the filing of such a petition. It is also not clear whether a personal representative has the duty to notify beneficiaries of insolvency.

Summary of Bill: The recommendations of the bar association task force on revising the probate code are adopted. Many provisions of the code are reorganized and updated. Several substantive changes are made.

CREDITORS' CLAIMS.

The filing and publication of a general notice to creditors is made optional rather than mandatory. Explicit provision is made for the personal representative to give actual notice to a creditor whose identity becomes known at any time during the probate.

The overall claim filing period is extended from 18 months to 24 months following the decedent's death. However, if the personal representative has chosen to file and publish a general notice to creditors, the claim period may be shortened. If such a general notice is published, any creditor who receives actual notice, or any creditor who is not reasonably ascertainable, must file a claim within 30 days of receiving actual notice, or within four months of the publication of the general notice, whichever is later. A reasonably ascertainable creditor who does not receive actual notice has the full 24 months to file a claim, whether or not the optional general notice has been published. If no general notice has been published, a creditor also has the full 24 months, whether or not the creditor was reasonably ascertainable and whether or not the creditor received actual notice.

INVENTORY AND APPRAISAL.

The filing of the inventory with the court is made optional. The requirement that an inventory be done remains, and the requirement for an appraisal is expressly made applicable to the initial inventory. Creditors, heirs, and beneficiaries are to be provided with a copy of the inventory and appraisal within 10 days of a request.

FAMILY SUPPORT.

Provisions relating to awards in lieu of homestead, support of minor children, and additional family support are reorganized and consolidated.

The court is authorized to make an award to a spouse or child of the decedent from the probate or non-probate assets of the estate whether or not probate proceedings have been commenced.

The rule established in *Estate of Ratcliff* is codified, and an award may be made from a decedent's separate or community property.

NONINTERVENTION POWERS.

The responsibilities of a personal representative with nonintervention powers are clarified. Express provisions are made for notifying beneficiaries of insolvency.

Beneficiaries may demand certain information from the personal representative during probate. For example, beneficiaries have the right to an accounting in certain

circumstances before the completion of the administration of the estate, whether or not nonintervention powers have been granted.

Personal representatives are granted supplementary powers to hold a reserve and to deal with tax issues even after the closing of probate.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

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