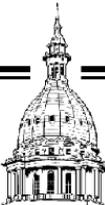




Senate Fiscal Agency
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BILL  ANALYSIS

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Senate Bill 490
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 5-8-95

SUMMARY OF SENATE BILL 490 as introduced 5-2-95:

The bill would amend the Revised Probate Code to provide that the actions of a person acting under a durable or nondurable power of attorney would bind the principal and his or her heirs and personal representative, if the person acted without actual knowledge of the principal's death. The bill also would revise provisions pertaining to claims against a decedent's estate, including requiring a personal representative to send notice to a creditor of whom the personal representative had actual notice or whose existence was reasonably ascertainable by the personal representative.

The Code provides that the death, disability, or incompetence of a principal who has executed a power of attorney in writing does not revoke or terminate the agency of the attorney in fact or other person who, without actual knowledge of the principal's death, disability, or incompetence, acts in good faith. The bill provides, instead, that the death of a principal who had executed a power of attorney, durable or otherwise, would not revoke or terminate the agency of the attorney in fact or other person who acted in good faith without actual knowledge of the principal's death. The bill also specifies that the disability or incompetence of a principal would not revoke the agency of the attorney in fact or other person who acted in good faith without actual knowledge of the disability or incompetence. As current law provides, an action so taken would bind the principal and his or her heirs, devisees, and personal representative.

Under the Code, unless notice already has been given, a personal representative must publish a notice notifying creditors of the estate to present their claims within four months after the date of the publication. The personal representative also must send a notice to any creditor who is known to the personal representative. For purposes of the notice provision, a personal representative has knowledge of a creditor if he or she is aware that the creditor has demanded payment from the decedent or the decedent's estate. The bill, instead, provides that a creditor of the decedent would be known to the personal representative if he or she had actual notice of the creditor or the existence of the creditor were reasonably ascertainable by the personal representative. The bill also would delete a provision that the Code does not impose a duty on the personal representative or his or her attorney to conduct a search for creditors of the estate.

The Code provides that claims against an estate are barred unless presented within specified time limits. The Code also states that this does not affect or prevent collection of compensation for services rendered and reimbursement of expenses advanced by the personal representative or by the attorney or accountant for the representative. The bill would refer, instead, to compensation

for services rendered and expenses advanced by the personal representative or by an attorney, auditor, investment adviser, or other specialized agent or assistant for the representative.

In addition, the Code requires that the personal representative give to all interested persons a copy of any claim made by him or her against the estate within seven days after the time for original presentation of the claim has expired. The bill would require that a personal representative's claim contain a warning that the claim would be allowed unless a notice of objection were delivered or mailed to the representative within 63 days after the time for original presentation of the claim had expired. This requirement would not apply, however, to a claim for collection of compensation for services rendered or for reimbursement of expenses advanced by the representative.

MCL 700.497 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: L. Nacionales-Tafoya

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.