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BILL



ANALYSIS

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Senate Bill 1059 (as introduced 7-3-96)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 9-10-96

CONTENT

The bill would create the “Estate Settlement Act” and repeal the Revised Probate Code (MCL 700.1-700.993). The proposed Estate Settlement Act (ESA) would, among other things, do the following:

- Establish the “Michigan prudent investor rule” for fiduciaries.
- Provide that specific dollar amounts applicable to beneficiaries would be subject to cost-of-living adjustments in future years.
- Permit a surviving spouse to take an elective-share amount equal to a percentage of the “augmented estate” (including the probate estate and certain nonprobate transfers), determined by the length of the marriage.
- Provide for three methods of probating an estate: informal probate, formal probate, and supervised administration.
- Permit a personal representative to exclude contaminated real estate from the scope of his or her responsibility.
- Specify procedures for dealing with property and debts of nonresident decedents.
- Provide for the registration of securities in “beneficiary form”, allowing a beneficiary to take ownership upon the death of the owner.
- Specify the duties, liabilities, and powers of trustees.

The ESA would take effect on January 1, 1997. The following is a brief overview of the bill.

Article I - Definitions, General Provisions, and Jurisdiction of the Court

This article would retain the exclusive legal and equitable jurisdiction of the probate court over estate settlement matters. Under the ESA, the probate court also would have exclusive jurisdiction to settle the accounts of all fiduciaries. (Under the Revised Probate Code (RPC), this jurisdiction is concurrent with the circuit court for the accounts of some trustees.)

Article I provides that the specific dollar amounts stated in various sections of the ESA would apply to decedents who died before January 1, 1998. For decedents dying on or after that date, the specific dollar amounts would have to be adjusted by a cost-of-living factor according to a list published by the Department of Treasury. (The dollar amounts pertain to the intestate share of a surviving spouse, the elective share of a surviving spouse, the homestead allowance, the exempt property allowance, the family allowance, and small estate value.)

The proposed Michigan prudent investor rule states, “A fiduciary shall invest and manage assets held in a fiduciary capacity as a prudent investor would, taking into account the purposes, terms, distribution requirements expressed in the governing instrument, and other circumstances of the fiduciary estate. In satisfying this standard, the fiduciary shall exercise reasonable care, skill, and caution.” The rule could be expanded, restricted, eliminated, or otherwise altered by the governing instrument (e.g., a deed, will, trust, insurance or annuity policy, security registered in beneficiary form, pension, retirement plan, or instrument creating a power of appointment or power of attorney). (“Fiduciary” would mean a personal representative, guardian, conservator, trustee, plenary guardian or partial guardian appointed under the Mental Health Code, and successor fiduciary.)

Article II - Intestacy, Wills, and Donative Transfers

The RPC provides for the share of a surviving spouse when a decedent dies intestate (without having executed a valid will), depending upon whether there are surviving children or parents of the decedent. The ESA would increase the amounts to which a spouse is entitled.

Under the law, a surviving spouse has the right to take a statutory “elective share” rather than the provision, if any, made in the decedent’s will. Currently, a surviving spouse’s elective share applies only to property in the probate estate. Under the ESA, a surviving spouse would have a right to take an elective-share amount equal to the value of the elective share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other. The percentage would range from 3% for a marriage of at least one year but less than two years, to 50% for a marriage of 15 or more years. The augmented estate would include the value of the decedent’s probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims; the value of the decedent’s nonprobate transfers to others, not included in the probate estate, of specific types of property; and the value of the decedent’s nonprobate transfers to the surviving spouse.

Article III - Probate of Wills and Administration

The ESA would retain the concept of independent probate, which generally avoids the involvement of the court. The ESA would refer to independent probate as informal probate or informal proceedings. “Informal proceedings” would mean probate of a will or appointment of a personal representative conducted by the probate register without notice to interested persons. Article III also would provide for formal testacy and appointment proceedings, and would define “formal proceedings” as proceedings conducted before a judge with notice to interested persons.

In addition, the ESA would provide for supervised administration, which would involve an intermediate degree of court involvement. “Supervised administration” would mean “a single in rem proceeding to secure complete administration and settlement of a decedent’s estate under the court’s continuing authority that extends until entry of an order approving estate distribution and discharging the personal representative or other order terminating the proceeding”. Except as otherwise provided, a supervised personal representative would have the same powers and duties as a personal representative who was not supervised.

Under the law, a personal representative is responsible for administering an estate and winding up its affairs, subject to the supervisory authority of the probate court. The ESA provides that, in accepting the duties of the office, a personal representative could exclude from the scope of his or her responsibilities, for up to three months, real estate or an ownership interest in a business entity if the personal representative believed that the real estate or other property owned by the

business was or could be contaminated by a hazardous substance, or was or had been used for any activity involving a hazardous substance that could result in liability to the estate or otherwise impair the value of property held in the estate. The personal representative's responsibilities would extend to the excluded property at the end of the exclusion period or until his or her notice to the court of acceptance of that property, unless he or she requested the court to appoint a special personal representative with respect to the excluded property or to exercise administrative authority over that property by direct judicial order.

Article IV - Foreign Personal Representatives: Ancillary Administration

This article contains rules and procedures for handling the property and debts of a nonresident decedent, and would provide for the powers of a personal representative from the decedent's state of domicile (a domiciliary foreign personal representative). (Though not defined in the bill, "ancillary administration" refers to administration in a state in which the decedent has property and that is not where the decedent was domiciled.) As a rule, a creditor of the decedent could pay the debt to the domiciliary foreign personal representative unless a resident creditor of the decedent complained.

Article V - Protection of an Individual under Disability and His or Her Property

Article V generally would retain current Michigan law on guardianships and conservatorships for minors and incapacitated individuals. The ESA would allow a parent or guardian of a minor or incapacitated person to appoint a guardian by any written document (not just a will) signed by the parent and at least two witnesses. The ESA also specifies activities that a conservator could perform in response to an environmental concern or hazard affecting property.

Article VI - Nonprobate Transfers on Death

This article contains rules governing "multiple-party accounts", which would be accounts payable on request to one or more of two or more parties, whether or not a right of survivorship was mentioned.

Article VI also contains uniform transfer-on-death security registration provisions under which a security could be registered in beneficiary form. ("Beneficiary form" would mean "a registration of a security that indicates the present owner of the security and the owner's intention regarding the person who will become the security's owner upon the owner's death".)

Article VII - Trust Registration

This article governs the treatment of trusts and trust administration. The ESA would provide for the registration of trusts; court jurisdiction concerning trusts; duties and liabilities of trustees (including the duty to account to trust beneficiaries); powers of trustees (including responses to environmental concerns or hazards); and claims against a decedent's revocable trust.

Article VIII - Effective Date and Repealer

Except as otherwise provided, on the Act's effective date (January 1, 1997), the ESA would apply to a governing instrument executed by a decedent dying after that date. The Act also would apply to a proceeding in court pending on that date or commenced after that date, regardless of the time of the decedent's death, except to the extent that the court believed the former procedure should apply in the interest of justice or because it would not be feasible to apply the ESA's procedure.

Every fiduciary holding an appointment on the Act's effective date would continue to hold the appointment, but would have only the powers conferred by the ESA and would be subject to the duties imposed with respect to an act occurring or done after that date.

The ESA would not impair an accrued right or an act done before the Act's effective date in a proceeding. If a right were acquired, extinguished, or barred upon the expiration of a prescribed period of time that began to run by a statutory provision before the ESA's effective date, the provision would remain in force with respect to that right.

Legislative Analyst: S. Margules

FISCAL IMPACT

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

Fiscal Analyst: M. Ortiz

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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.