

HOUSE RESEARCH

Bill Summary

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Overview

The bill makes miscellaneous changes in probate and trust law.

Section

1 **When nonvested interest.** Amends a trust law provision to conform to United States Treasury Department regulations for avoidance of the federal generation skipping tax (GST). Provides that language in a trust document is inoperative to the extent that it produces a result in excess of a time period that has been accepted by the Treasury Department. (In some cases the Treasury Department will exempt a trust from GST if a special power can be exercised for up to 90 years after creation of the trust, but the department will not allow instruments to provide for exercising power on the later date of (1) the common law rule against perpetuities or (2) 90 years, whichever was longer.)

2 **Revocation by dissolution of marriage.** The bill changes rules for revoking a will or trust after marriage dissolution or annulment. It includes an exception as provided by the express terms of a governing instrument, a court order, or contract made between individuals before or after the marriage, or a qualified or non-qualified retirement plan.

The dissolution or annulment of marriage revokes the following in a governing instrument:

Disposition, beneficiary designation, or appointment of property to a former spouse.

A general or non-general power of appointment conferred on former spouse.

Nomination of former spouse to serve in any fiduciary capacity.

The revocation does not extend to the relative of a former spouse.

The bill does not sever the interest of property held with former spouse as joint tenants with right of survivorship.

The effect of the revocation is that the former spouse is treated as though he/she died immediately before the dissolution or annulment.

Provisions are revived by subsequent remarriage of parties.

A payor or other third party is not liable for making a payment or disposing of property if acting in good faith reliance on the validity of the governing instrument before receiving written notice (written notice is required to be delivered to the payor or third party's main office or home).

Current section 524.2-804 is as follows:

Includes an exception as provided by the express terms of a will.

If after executing a will, an individual's marriage is dissolved or annulled, the dissolution or annulment of marriage revokes the following provisions of a will:

Any disposition or appointment of property to the former spouse.

A general or special power of appointment conferred on the former spouse.

Any nomination of the former spouse as a fiduciary.

The effect of the revocation is that the former spouse is treated as though he/she failed to survive the decedent.

Provisions are revived by subsequent remarriage of the parties.

No third party protection provision.

- 3 **Collection of personal property by affidavit.** Clarifies that for purposes of determining that an estate qualifies for the procedure of collecting personal property by affidavit, the value of the estate is determined as of the time of death.
- 4 **Clearance for medical assistance claims.** Amends existing law on clearing an estate of the existence of medical assistance claims. Exempts from the requirement of a clearance for medical assistance claims if: (1) the estate was previously probated in this state; (2) the previous probate was not a special administration or summary proceeding; and (3) the property which is the subject of the petition for a decree of descent was omitted from the previous probate. Makes the amendment apply to proceedings for a decree of descent started after July 31, 2000.
- 5 **Effective date.** Section 4 is effective retroactive to July 31, 2000.