

2/28/85

Second Supplement to Memorandum 85-12

Subject: Legislative Program (Assembly Bill 97)

Attached is a copy of Assembly Bill 97 in the form in which it was approved by the Assembly Judiciary Committee. You will note that the amendment made on page 3 substitutes a reasonable person standard for the subjective standard originally provided in the bill. This amendment was made because questions were raised by the Chief Assistant, Assembly Majority Leader, concerning the bill before the hearing and the amendment was designed to eliminate objection to the bill.

Professor Halbach has brought to our attention two matters in connection with the wills and intestate succession statute that the staff believes should be corrected in Assembly Bill 97 so that the corrections will become operative immediately upon enactment of the bill. A draft of the amendments proposed to Assembly Bill 97 is attached. The following is an explanation of the amendments:

Amendment to Section 6147

The amendment to Section 6147 which adds the new sentence at the end of subdivision (b) is a clarifying, technical amendment. Where the testator provides in the will that the devisee takes only if the devisee survives the testator by five days, for example, the testator does not want the antilapse statute to apply if the devisee fails to survive by five days; that is the reason that the testator includes the five-day survival requirement in the will. The amendment makes clear that the language "until a future time required by the will" does not apply to this type of survival provision.

Amendment to Section 6205

This amendment is a technical amendment that changes the reference in Section 6205 to make reference the section that defines child and parent for the purposes of testate succession. The sections to which reference is made under Section 6205 in its present form deal with

intestate succession and are not appropriate for use under Section 6205 which deals with interpretation of the statutory will.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

AMENDMENTS TO ASSEMBLY BILL No. 97
(as amended in Assembly February 25, 1985)

Amendment 1

In line 1 of the title, strike out "Section 649.1" and insert:
Sections 649.1, 6147, and 6205

Amendment 2

On page 2, line 25, after "election" insert:
under subdivision (b)

Amendment 3

On page 4, line 2, after "SEC. 3." insert:
Section 6147 of the Probate Code is amended to read:

6147. (a) As used in this section, "devisee" means a devisee who is kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator.

(b) Subject to subdivision (c), if a devisee is dead when the will is executed, or is treated as if he or she predeceased the testator, or fails to survive the testator or until a future time required by the will, the issue of the deceased devisee take in his or her place ~~by representation~~ in the manner provided in Section 240. A devisee under a class gift is a devisee for the purpose of this subdivision unless his or her death occurred before the execution of the will and that fact was known to the testator when the will was executed. For the purposes of this subdivision, survival "until a future time required by the will" includes both expressed and implied requirements but does not include a requirement that the devisee survive until a future time that is related to the death of the testator or to the probate of the will or administration of the estate of the testator.

(c) The issue of a deceased devisee do not take in his or her place if the will expresses a contrary intention or a substitute disposition.

SEC. 4. Section 6205 of the Probate Code is amended to read:

6205. "Descendants" means children, grandchildren, and their lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent in sections 26 and 54 as provided in Section 6152. A reference to "descendants" in the plural includes a single descendant where the context so requires.

SEC. 5.

AMENDED IN ASSEMBLY FEBRUARY 25, 1985

AMENDED IN ASSEMBLY FEBRUARY 7, 1985

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 97

Introduced by Assembly Member McAlister

December 6, 1984

An act to amend Section 649.1 of, and to add Section 1201 to, the Probate Code, relating to probate, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 97, as amended, McAlister. Probate.

Existing provisions of the Probate Code governing the administration of estates ~~requires~~ *require* that notice of certain proceedings be given to heirs, or devisees and legatees, or both, of a decedent or testator.

This bill would provide that notice need not be given to an heir if the person is an heir because of a parent-child relationship between a stepchild and a stepparent or between a foster child and a foster parent. It would also provide that notice need not be given to a person who is a member of a class to whom a devise or bequest is made if the person is a member of the class because of a parent-child relationship between a stepchild and a stepparent or between a foster child and a foster parent. Those provisions would be inapplicable where the person ~~giving~~ *otherwise required to give* notice has *actual* knowledge of facts that ~~the~~ a person ~~reasonably believes~~ *would reasonably believe* establish that the relationship between the child and the stepparent or foster parent is to be given the same effect as an adoptive relationship.

The bill would also make a technical change relating to

passage of property to a surviving spouse without administration when a husband or wife dies intestate.

The bill would take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 649.1 of the Probate Code is
2 amended to read:
3 649.1. (a) Except as provided in Section 649.3, when
4 a husband or wife dies intestate leaving property that
5 passes to the surviving spouse under Section 6401, or dies
6 testate and by his or her will bequeaths or devises all or
7 a part of his or her property to the surviving spouse, it
8 passes to the survivor subject to the provisions of Sections
9 649.2 and 649.4, and no administration is necessary.
10 (b) Notwithstanding subdivision (a), upon the
11 election of the surviving spouse or the personal
12 representative, guardian of the estate, or conservator of
13 the estate of the surviving spouse, the following property
14 may be administered under this division:
15 (1) The one-half of the community property that
16 belongs to the decedent under Section 100, the one-half
17 of the quasi-community property that belongs to the
18 decedent under Section 101, and the separate property of
19 the decedent.
20 (2) Both the property described in paragraph (1) and
21 the one-half of the community property that belongs to
22 the surviving spouse under Section 100, and the one-half
23 of the quasi-community property that belongs to the
24 surviving spouse under Section 101.
25 (c) The election shall be made within four months
26 after the issuance of letters testamentary or of
27 administration, or within such further time as the court
28 may allow upon a showing of good cause, by a writing
29 specifically evidencing the election filed in the
30 proceedings for the administration of the estate of the
31 deceased spouse and prior to the entry of an order under

1 Section 655.

2 (d) Notwithstanding subdivision (a) or (b), the
3 surviving spouse or the personal representative, guardian
4 of the estate, or conservator of the estate of the surviving
5 spouse may file an election and agreement in the
6 proceedings for the administration of the estate of the
7 deceased spouse to have all or part of the one-half of the
8 community property that belongs to the surviving spouse
9 under Section 100 and the one-half of the
10 quasi-community property that belongs to the surviving
11 spouse under Section 101 transferred by the surviving
12 spouse or the surviving spouse's personal representative,
13 guardian, or conservator to the trustee under the will of
14 the deceased spouse or the trustee of an existing trust
15 identified by the will of the deceased spouse, to be
16 administered and distributed by the trustee. The election
17 and agreement must be filed before the entry of the
18 decree of final distribution in the proceedings.

19 SEC. 2. Section 1201 is added to the Probate Code, to
20 read:

21 1201. (a) Except as otherwise provided in this
22 section, where a provision of this division requires that
23 notice be given to heirs, or to devisees and legatees, or
24 both, of a decedent or testator:

25 (1) Notice need not be given to an heir of the
26 decedent or testator if the person is an heir because of a
27 parent-child relationship between a stepchild and a
28 stepparent or between a foster child and a foster parent.

29 (2) Notice need not be given to a person who is a
30 member of a class to whom a devise or bequest is made
31 if the person is a member of the class because of a
32 parent-child relationship between a stepchild and a
33 stepparent or between a foster child and a foster parent.

34 (b) Subdivision (a) does not apply where the person
35 required to give the notice has actual knowledge of facts
36 which ~~that person reasonably believes a person would~~
37 *reasonably believe* give rise under Section 6408 to the
38 parent-child relationship between the stepchild and the
39 stepparent or the foster child and the foster parent.

40 (c) Nothing in this section limits the provisions of

1 Sections 1202, 1202.5, or 1204.

2 SEC. 3. This act is an urgency statute necessary for
3 the immediate preservation of the public peace, health,
4 or safety within the meaning of Article IV of the
5 Constitution and shall go into immediate effect. The facts
6 constituting the necessity are:

7 In order to avoid the expense of giving unnecessary
8 notices to persons who have no interest in a decedent's
9 estate under a statutory provision that becomes operative
10 on January 1, 1985, it is necessary that this act take effect
11 immediately.

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