

Memorandum 85-26

Subject: Study L-630 - Notice in Probate Proceedings

At the November meeting the Commission determined that an urgency bill should be introduced in December 1984 to provide that notice in probate proceedings need not be given to a stepchild or foster child that was not legally adopted unless the person giving the notice has actual knowledge that the relationship between the stepchild or foster child and the stepparent or foster parent began during the child's minority, continued throughout the parties' joint lifetimes, and the stepparent or foster parent would have adopted the child but for a legal barrier.

We send a draft of the bill to the Commissioners and to Mr. Collier of the State Bar. None of the Commissioners advised us of any problem in connection with the bill. Mr. Collier thought that the drafting of the bill might be improved, but he agreed that the bill should be introduced so that it could start its way through the legislative process.

Attached is a copy of Assembly Bill 97. Does the Commission wish to make any revisions in this bill?

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Introduced by Assembly Member McAlister

December 6, 1984

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

LEGISLATIVE COUNSEL'S DIGEST

AB 97, as introduced, McAlister. Probate Procedure.

Existing provisions of the Probate Code governing the administration of estates requires 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 child has been legally adopted by the stepparent or foster parent or where the person giving notice has knowledge of facts that 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 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 1201 is added to the Probate
2 Code, to read:

3 1201. (a) Except as otherwise provided in this
4 section, where a provision of this division requires that
5 notice be given to heirs, or to devisees and legatees, or
6 both, of a decedent or testator:

7 (1) Notice need not be given to an heir of the
8 decedent or testator if the person is an heir because of a
9 parent-child relationship between a stepchild and a
10 stepparent or between a foster child and a foster parent.

11 (2) Notice need not be given to a person who is a
12 member of a class to whom a devise or bequest is made
13 if the person is a member of the class because of a
14 parent-child relationship between a stepchild and a
15 stepparent or between a foster child and a foster parent.

16 (b) Subdivision (a) does not apply in the following
17 cases:

18 (1) Where the stepchild was legally adopted by the
19 stepparent or where the foster child was legally adopted
20 by the foster parent.

21 (2) Where the person required to give the notice has
22 actual knowledge of the facts giving rise under Section
23 6408 to the parent-child relationship between the
24 stepchild and the stepparent or the foster child and foster
25 parent.

26 (c) Nothing in this section limits the provisions of
27 Sections 1202, 1202.5, or 1204.

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

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