

First Supplement to Memorandum 86-33

Subject: Study L - Assembly Bill 2625 - Comprehensive Probate Bill

On April 1, the Assembly Judiciary Committee heard Assembly Bill 2625. The Committee was concerned that the suggestions of the Executive Committee of the Probate Section of the Los Angeles County Bar Association had not been addressed by the Commission. See Memorandum 86-33 and the attached letter.

I suggested to the Assembly Committee that they report the bill out and that the Commission would make amendments to the bill that would deal adequately with the concerns of the Los Angeles Bar Committee. I indicated that we would have the bill referred back to the Assembly Judiciary Committee after it passed the Senate if the Los Angeles Bar Committee was still concerned about the bill. However, the Assembly Committee was unwilling to do that; the Assembly Committee took the view that the bill should be in proper form at the time it is reported out by the Committee.

The Assembly Committee directed that the bill be set over to April 15, the last day on which fiscal bills can be reported out of the Committee. (Assembly Bill 2625 is a fiscal bill.) If the bill is not favorably approved by the Committee on that day, the bill is dead.

The Assembly Committee also directed that the Committee be provided as soon as possible with amendments that would deal adequately with the concerns expressed by the Los Angeles Bar Committee. The Assembly Committee suggested that this bill be the first order of business at the Commission's April meeting, and that I call the Committee counsel on April 10 to advise whether the Commission had approved those amendments. The Committee counsel will prepare the bill analysis for the Committee on the bill as amended by those amendments.

The Judicial Counsel also had a representative at the hearing who apparently had talked to the committee members prior to the hearing.

I told him I had no authority to agreed to amendments to the bill but that I felt confident that the Commission would approve deferring the operative date until July 1, 1987, as he requested. However, since I was unable to agree to the amendment, he wanted the bill amended to make the amendment before it went out of the Committee. There were other factors involved in the delay of the bill by the Committee.

I called the Chairperson of the Law Revision Commission but have been unable to discuss this matter with him. Because of the need to act, I have discussed the amendments that might be made with Commissioner Stodden. A representative of the Los Angeles Bar Committee had advised me that he had discussed the concerns of the Bar Committee with Commissioner Stodden. Because she was familiar with the concerns of the Bar Committee, Commissioner Stodden was able to approve the attached amendments in principle in a telephone conversation with me today, but she has not seen the exact text of the amendments. I then discussed the amendments with the representative of the Los Angeles Bar Committee and he has agreed to write a letter to the Assembly Judiciary Committee stating that the amendments as outlined to him on the telephone would adequately address the concerns the Los Angeles Bar Committee had expressed in their previous letter to the Committee.

Attached are the amendments to Assembly Bill 2625. If possible, we hope to get the bill amended before the hearing so that we do not have to explain the amendments to the Committee at the hearing. I expect that there will be a substantial number of bills to be considered at the hearing.

At the meeting, the Commission should approve the amendments or drop the bill for this session. If there are problems in connection with the amendments, the Commission can make the necessary corrections in the Senate.

The amendments are to Assembly Bill 2625 as amended in Assembly March 31, 1986. A copy of the amended bill is attached.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

AMENDMENTS TO ASSEMBLY BILL 2625
AS AMENDED IN ASSEMBLY MARCH 31, 1986

AMENDMENT ____

In line 1 of the title, strike out "Section 353.5" and insert:
Sections 353.5 and 385

AMENDMENT ____

In line 3 of the title, after "605," insert:
704.2,

AMENDMENT ____

On page 4, between lines 14 and 15, insert:

SEC. 1.5. Section 385 of the Code of Civil Procedure is amended to read:

385. (a) An action or proceeding does not abate by the death, or any disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of the death or any disability of a party, the court, on motion, may allow the action or proceeding to be continued by or against his representative or successor in interest. In case of any other transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

(b) In the case of an action for injury to or for the death of a person caused by the wrongful act or neglect of the defendant, and the defendant dies after the commencement of the action, the action may be continued, against the decedent as the original party defendant without the appointment of a representative or successor in interest, if the decedent had liability insurance applicable to the cause of action, the amount of damages sought in the action does not exceed the maximum amount of such insurance, or recovery of excess thereof is waived, and the estate of the decedent otherwise qualifies for summary probate proceedings pursuant to ~~the provisions of~~ Section 630 Part 1 (commencing with Section 13000) of Division 8 of

the Probate Code. No action may be continued under this subdivision unless the insurer has been served with the complaint filed in the action. For good cause, the court, upon motion of an interested person or upon its own motion, may order the appointment of a personal representative and his substitution as the defendant.

AMENDMENT ____

On page 11, between lines 2 and 3, insert:

SEC. 9.5. Section 704.2 of the Probate Code is amended to read:

704.2. A claim may be filed by the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse for the payment of the debts of the deceased spouse described in ~~Section 64914~~ Chapter 3 (commencing with Section 13550) of Part 2 of Division 8. The claim must be filed prior to the filing of a petition for final distribution. It shall set forth the reason why the debts are not barred by ~~subdivision (b) of Section 64914~~ Section 13552 and a statement whether the debts remain unpaid or have been paid by the surviving spouse. If the surviving spouse is personally liable for the debts, the claim shall also include an inventory of the separate property of the surviving spouse and any community property not administered in the estate and a statement of the value of the property less the amount of the liens and encumbrances upon the property as of the date of death of the deceased spouse. The statement may identify any property which is exempt from enforcement of a money judgment.

AMENDMENT ____

On page 17, line 12, strike out "duly"

AMENDMENT ____

On page 21, line 19, strike out lines 19 to 22, inclusive, and insert:

(7) A statement of any unpaid liabilities for expenses of the last illness, funeral charges, and expenses of administration.

AMENDMENT ____

On page 23, strike out lines 30 to 40 inclusive.

AMENDMENT ____

On page 24, strike out line 1 and in line 2, strike out "under this section." and insert:

6609. (a) If the court determines that the net value of the decedent's estate, over and above all liens and encumbrances at the date of death of the decedent and over and above the value of any probate homestead interest set apart out of the decedent's estate under Section 6520, does not exceed twenty thousand dollars (\$20,000), as of the date of the decedent's death, the court shall make an order under this section unless that the court determines that making an order under this section would be inequitable under the circumstances of the particular case.

(b)

AMENDMENT ____

On page 24, line 17, strike out "If the court in its discretion" and insert:

Subject to subdivision (d), if the court

AMENDMENT ____

On page 24, between lines 22 and 23, insert:

(d) If there are any liabilities for expenses of the last illness, funeral charges, and expenses of administration that are unpaid at the time the court makes an order under this section, the court shall make such orders as are necessary so that those unpaid liabilities are paid.

AMENDMENT ____

On page 24, line 23, strike out "(d)" and insert:

(e)

AMENDMENT ____

On page 25, between lines 19 and 20, insert:

(e) If proceedings are commenced in this state for the administration of the estate of the decedent and the time for filing or presenting claims has commenced, any action upon the personal liability of a person under this section is barred to the same extent as provided for claims under Article 1 (commencing with Section 700) of Chapter 12 of Division 3, except as to the following:

(1) Creditors who had commenced judicial proceedings for the enforcement of the debts and had served the person liable under this section with process prior to the expiration of the time for filing or presenting claims.

(2) Creditors who have or who secure the acknowledgment in writing of the person liable under this section that that person is liable for the debts.

(3) Creditors who file a timely claim in the proceedings for the administration of the estate of the decedent.

AMENDMENT ____

On page 26, line 12, strike out "January" and insert:

July

AMENDMENT ____

On page 26, line 13, strike out "January" and insert:

July

AMENDMENT ____

On page 26, line 15, strike out "January" and insert:

July

AMENDMENT ____

On page 26, line 16, strike out "January" and insert:

July

AMENDMENT ____

On page 29, line 12, strike out "January" and insert:

July

AMENDMENT ____

On page 29, line 17, strike out "January" and insert:

July

AMENDMENT ____

On page 29, line 19, strike out "January" and insert:

July

AMENDMENT ____

On page 36, line 3, strike out "and (d)," and insert:

(d), and (e),

AMENDMENT ____

On page 37, between lines 1 and 2, insert:

may be brought only by the personal representative of the estate of the decedent. In an action to enforce the liability under this section, the court may give a judgment enforcing the liability only to the extent necessary to protect the interests of the heirs, devisees, and creditors of the decedent.

(e) An action to enforce the liability under this section

AMENDMENT ____

On page 39, line 38, strike out "remain operative only until" and insert:

not become operative on

AMENDMENT ____

On page 44, between lines 29 and 30, insert:

(e) A certified copy of the decedent's death certificate shall be attached to the affidavit.

AMENDMENT ____

On page 46, line 16, strike out "and (d)," and insert:

(d), and (e),

AMENDMENT ____

On page 47, between lines 38 and 39, insert:

(e) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent. In an action to enforce the liability under this section, the court may give a judgment enforcing the liability only to the extent necessary to protect the interests of the heirs, devisees, and creditors of the decedent.

AMENDMENT ____

On page 47, line 39, strike out "(e)" and insert:

(f)

AMENDMENT ____

On page 47, line 39, strike out "impose" and insert:
enforce the

AMENDMENT ____

On page 50, line 32, strike out "January" and insert:
July

AMENDMENT ____

On page 50, line 33, strike out "January" and insert:
July

AMENDMENT ____

On page 51, line 16, strike out ", in any of the" and insert
a period

AMENDMENT ____

On page 51, strike out lines 17 to 24, inclusive

AMENDMENT ____

On page 52, line 9, strike out "January" and insert:
July

AMENDMENT ____

On page 60, line 7, strike out "remain operative only until" and insert:
not become operative on

AMENDMENT ____

On page 64, line 23, strike out "January" and insert:
July

AMENDMENT ____

On page 64, line 29, strike out "January" and insert:
July

AMENDMENT ____

On page 64, line 30, strike out "January" and insert:
July

AMENDMENT ____

On page 70, line 19, strike out "January" and insert:
July

AMENDMENT ____

On page 70, line 22, strike out "January" and insert:
July

AMENDMENT ____

On page 77, after line 9, insert:
SEC. 28. (a) Except as provided in subdivisions (b) and (c), this act becomes operative on July 1, 1987.
(b) After the effective date of this act, the Judicial Council may adopt any forms necessary so that the forms may be used when this act becomes operative.
(c) After the effective date of this act, the courts may adopt any rules necessary so that the rules will be effective when this act becomes operative.