

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 280 (Substitute S-1 as passed by the Senate)

Sponsor: Senator John F. Kelly

Committee: Judiciary

Mich. State Law Library

Date Completed: 10-6-89

**RATIONALE**

Public Act 222 of 1988 (House Bill 5045) made extensive amendments to the Revised Probate Code relative to the administration of estates, pursuant to recommendations of the Probate and Estate Planning Section of the State Bar of Michigan. That Act aimed to simplify and update procedures for claims against estates, to benefit creditors by requiring an estate's personal representative to give them actual notice, and to make Michigan law more consistent with that of other states. Since Public Act 222's revisions were enacted, the Probate and Estate Planning Section has suggested some further clarifications in the areas of judicial review of compensation and employment related to an estate's administration, satisfying the standard for "actual notice" to creditors that was recently articulated by the United States Supreme Court, and notice to interested parties of a personal representative's claim against the estate.

**CONTENT**

The bill would amend the Revised Probate Code to allow the court to review a challenge to the propriety of a person's employment by an estate fiduciary, and specify certain requirements of a personal representative pertaining to known creditors and a personal representative's claims against an estate.

On petition of an interested person, the court could review the propriety of employment of any person by a fiduciary, or the reasonableness

of the person's or the fiduciary's compensation for his or her services. A prior court order would not be required for the payment of compensation to a fiduciary, attorney, auditor, investment adviser, or other specialized agent or assistant. The court could order any person who received excessive compensation to refund the estate.

The Code requires a personal representative to give notice to creditors of an estate, who are known to the representative, to present their claims. The bill specifies that a creditor would be known to the representative if he or she had "actual notice of the creditor or the existence of the creditor was reasonably ascertainable by the personal representative". The bill also would delete a provision that specifies that the Code "does not impose a duty on the personal representative or his or her attorney to conduct a search for creditors of the estate".

Under the Code, copies of a claim by the personal representative against the estate must be given to all interested persons within seven days after the time for original presentation expired. The bill specifies that such claims would have to contain a warning that the claim would be allowed unless a notice of objection was delivered or mailed to the representative within 63 days after the time for original presentation expired. The bill also would create an exception to these requirements for claims of a personal representative for compensation for services or reimbursement of expenses.

MCL 700.541 et al.

S.B. 280 (S-1) (10-6-89)

## **FISCAL IMPACT**

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

## **ARGUMENTS**

### **Supporting Argument**

Although the amendments to the Revised Probate Code enacted by Public Act 222 of 1988 generally streamlined the estate administration and claim process, some clarification in certain areas is needed. The bill specifies that the Probate Court would have the authority to review compensation and employment of the fiduciary and others he or she employed, but that prior approval would not be necessary. While review authorization is prudent, prior approval of fees and employment would only add to the expense of administration. In addition, since prior approval of such claims would not be necessary, a personal representative's claim should not have to be filed with the Court. The bill, instead, would offer a protection against excessive and abusive claims by requiring a personal representative's notice to interested parties of his or her claim to contain a warning that it would be allowed unless objected to within 63 days.

### **Supporting Argument**

The 1988 Act, while requiring notice to known creditors (i.e., those whom the personal representative is aware have demanded payment from the decedent or the estate), specified that the Code does not impose a duty on a personal representative to conduct a search for creditors. According to the Probate and Estate Planning Section, however, this may not meet the due process requirement reiterated by the United States Supreme Court in Tulsa Professional Collection Services, Inc. v Pope Estate (108 S. Ct. 1340 (1988)). The Court held that the due process clause requires actual notice to a "known or reasonably ascertainable creditors", and reasonably diligent efforts must be made to uncover the identity of creditors, but there is no obligation to make impractical and extended searches. In light of this, the bill would delete the provision specifying no duty to conduct a search and provides, instead, that a creditor would be known to the representative if he or she had "actual notice of the creditor or the existence of

the creditor was reasonably ascertainable by the personal representative".

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