



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

SMALL ESTATES

House Bill 5024 (Substitute H-1) First Analysis (10-13-93)

Sponsor: Rep. Michael E. Nye
Committee: Judiciary

THE APPARENT PROBLEM:

Under the Revised Probate Code, if the estate of a deceased person is valued at \$5,000 or less, the court may order the property to be turned over to the surviving spouse, if any, or to a person who paid the funeral expenses, up to the amount of that payment, with the balance going to the spouse or heirs. This provision streamlines the probating of small estates and allows the payment of funeral expenses without the necessity of going through the more involved and time-consuming procedures usually required to probate an estate.

Shortcomings of the law have been identified, however. For one thing, the low limit means that an estate with virtually any assets at all--such as a car and some furniture--can exceed the limit and have to go through a more lengthy probate process.

Another reported problem has been that of inconsistent interpretation of the law. Although the provision is commonly read to apply to estates with a gross value of \$5,000 or less, apparently some judges compute the value of the estate as a net value, first deducting any encumbrances on the property, along with the exceptions and allowances made for a surviving spouse and minor children. Those allowances entitle a surviving spouse to receive a homestead allowance of \$10,000, a personal property allowance of \$3,500, and a family allowance to support and maintain the surviving spouse and any minor children pending settlement of the estate, up to one year.

Legislation has been proposed to increase the size of an estate that may be processed as a small estate, and to specify that the amount is to reflect the value of the estate minus any claims against it.

THE CONTENT OF THE BILL:

The bill would amend the Revised Probate Code to allow more estates to be processed as "small estates" that can be turned over to heirs by simple

application and court order. The current limit of \$5,000 would be increased to \$15,000, and the limit would be based on the value of the estate minus any funeral and burial expenses, expenses of the decedent's last illness, and any other known claims against the estate. Language that allows payment directly to someone who bore the funeral expenses (with any remainder going to spouse or heirs) would be deleted; under the bill, the estate could only be turned over to any surviving spouse, or if there was no spouse, to the heirs.

MCL 700.102

FISCAL IMPLICATIONS:

The State Court Administrative Office (SCAO) reports that by allowing more estates to be handled under the simplified process, the bill could reduce costs for probate courts. However, the SCAO has further noted that the bill could engender costly delays in the process, and that the bill would reduce court fee revenue because small estates are processed under a \$25 filing fee instead of the \$60 filing fee that otherwise would apply. (10-11-93 and 10-13-93)

ARGUMENTS:

For:

The bill would clarify and expand the use of the streamlined procedures for the processing of small estates, thus allowing more estates to be transferred to surviving spouses or heirs by simple application to and order of the probate court. With the current limit of \$5,000, ownership of even a small amount of property--such as a car--can disqualify a decedent's estate. Further, as some judges apparently have construed the law to mean that the limit applies to the value of the estate minus certain claims and statutory allowances, while others have applied the limit to the gross value of the estate, the bill would settle the matter by specifying that limit is to

represent the value of the estate minus any claims against it.

Against:

The bill would change the basic purpose of the small estate process, which is to offer streamlined procedures for estates whose value roughly approximates the cost of a funeral. While any amount remaining after funeral expenses are paid is supposed to go to heirs, the statute has been constructed so that there is very little, if any, left over in an estate processed as a small estate. Thus, with a low limit, the lack of notice for creditors and other procedural safeguards in the small estate process are without any significant impact. The bill however, both increases the limit and changes the method of its computation, changing the limit from a gross figure to a net figure. Much larger estates thus could be processed as small estates, leaving creditors without notice or the opportunity to satisfy their claims prior to the estate's changing hands.

In addition, the bill would substantially slow the small estate process by requiring known claims, including the medical expenses of the final illness, to first be satisfied. The probate court, which now can process small estates expeditiously, would have to sort out possibly competing claims of heirs and creditors. Worse, what has been an extremely quick process, often managed within days after the funeral, could become a prolonged one, delayed by waits for final medical bills to arrive.

Response:

The probate court's burden in reviewing claims would be minimal, confined to looking over the evidence presented to show that claims, including funeral and final medical expenses, had been paid. Further, any dispute over distribution of assets among creditors should be resolved by employing the order of priority established under Section 192 of the code.

Against:

Apparently, part of the confusion over implementation of the provisions for small estates has to do with whether the spousal and family allowances should be deducted in determining the value of the estate. The bill would not resolve this issue, as it refers only to deducting claims against the estate.

POSITIONS:

The Michigan Bankers Association has no position at this time. (10-12-93)

The Michigan Probate Judges Association has no position at this time. (10-12-93)