

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 1076

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CASKEY.

Read 1st time January 15, 2004, and ordered printed.

Read 2nd time January 26, 2004, and referred to the Committee on the Judiciary and Civil and Criminal Jurisprudence.

Reported from the Committee March 18, 2004, with recommendation that the bill do pass.

Taken up for Perfection April 8, 2004. Bill declared Perfected and Ordered Printed.

4042S.01P

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 461.300, RSMo, and to enact in lieu thereof one new section relating to nonprobate transfers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 461.300, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 461.300, to read as follows:

461.300. 1. Each recipient of a recoverable transfer of a decedent's property shall be liable to account for a pro rata share of the value of all such property received, to the extent necessary to discharge the statutory allowances to the decedent's surviving spouse and dependent children, and claims remaining unpaid after application of the decedent's estate, including expenses of administration and costs as provided in subsection 3 of this section, and including estate or inheritance or other transfer taxes imposed by reason of the decedent's death only where payment of those taxes is a prerequisite to satisfying unpaid claims which have a lower level of priority. No proceeding may be brought under this section when the deficiency described in this subsection is solely attributable to costs and expenses of administration.

2. The obligation of a recipient of a recoverable transfer may be enforced by an action for accounting commenced within eighteen months following the decedent's death by the decedent's personal representative or a qualified claimant,

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

but no action for accounting under this section shall be commenced by any qualified claimant unless the personal representative has received a written demand therefor by a qualified claimant. If the personal representative fails to commence an action within thirty days of the receipt of a written demand to do so, any qualified claimant may commence such action. If the personal representative fails to commence the action, the personal representative shall disclose to the qualified claimant or qualified claimants who made such written demand all material knowledge within the possession of the personal representative reasonably relating to the identity of any recipient of a recoverable transfer made by the decedent. In the event the personal representative fails to provide such information with respect to any recoverable transfer of the decedent's property to the personal representative, the eighteen-month limitation is tolled for such recoverable transfer until such time as the personal representative provides such information. In the event the personal representative is alleged in a verified pleading to be a recipient of a recoverable transfer from the decedent, the court may appoint an administrator ad litem to represent the estate in any proceeding brought pursuant to this section. Sums recovered in an action for accounting under this section shall be administered by the personal representative as part of the decedent's estate.

3. The judgment in a proceeding authorized by this section shall take into account the expenses of administration of the estate including the cost of administering the additional assets obtained in the proceeding, and the costs of the proceeding to the extent authorized by this subsection. The court may order the costs of the proceeding, including attorney fees, to be treated as expenses of administration of the estate.

4. If an action for accounting has been commenced under this section within eighteen months following the decedent's death, then any party to the proceeding may join and bring into the action for accounting any other recipient of a recoverable transfer of the decedent's property even if the other recipient is not joined until more than eighteen months following the decedent's death. If an action for accounting has been commenced under this section more than eighteen months following the decedent's death pursuant to the tolling provisions of subsection 2 of this section, then the personal representative, or former personal representative, who received a recoverable transfer of the decedent's property shall be liable to account under the provisions of subsection 1 of this section for the value of all such property received by such personal representative, or former personal representative, and no other recipient of a recoverable transfer of the decedent's property may be joined or brought into the action, and in such case, full

recovery, rather than pro rata recovery, may be had from the recoverable property received by such personal representative or former personal representative.

5. This section shall not affect the right of any transferring entity, as defined in section 461.005, to execute a direction of the decedent to make a payment or to make a recoverable transfer on death of the decedent, or make the transferring entity liable to the decedent's estate, unless before the payment or transfer is made the transferring entity has been served with process in a proceeding brought under this section and the transferring entity has had a reasonable time to act on it.

6. This section does not create a lien on any property that is the subject of a recoverable transfer, except as a lien may be perfected by the way of attachment, garnishment, or judgment in an accounting proceeding authorized by this section.

7. An action for accounting under the provisions of this section may be filed in the probate division of the circuit court, and the probate division of the circuit court may hear and determine questions and issue appropriate orders in an action for accounting under this section. Any proceeding under this section and any statements by a personal representative in connection with any recoverable transfer shall be deemed to be proceedings or statements under the probate code that are subject to section 472.013, RSMo.

8. The recipient of any property held in trust that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, and the recipient of any property held in joint tenancy with right of survivorship that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, are subject to this section, but only to the extent of the decedent's contribution to the value of the property.

9. The provisions of this section shall apply to all actions commenced after August 28, 1995, except that with respect to decedents dying prior to August 28, 1995, an action for accounting under this section may be commenced within two years following the decedent's death.

10. As used in this section, the following terms mean:

(1) "Creditor", any person to whom the decedent is liable, which liability survives whether arising in contract, tort, or otherwise, and any person to whom the decedent's estate is liable for funeral expenses and the reasonable cost of a tombstone;

(2) "Dependent child", the decedent's minor children whom the decedent was obligated to support and the children who were in fact being supported by the decedent;

(3) "Qualified claimant", a creditor, surviving spouse, dependent child, or a

person acting for a dependent child of the decedent;

(4) "Recoverable transfer", a nonprobate transfer of a decedent's property under sections 461.003 to 461.081 and any other transfer of a decedent's property other than from the administration of the decedent's probate estate that was subject to satisfaction of the decedent's debts immediately prior to the decedent's death, but only to the extent of the decedent's contribution to the value of such property.

[461.300. 1. Each beneficiary who receives a nonprobate transfer of a decedent's property under sections 461.003 to 461.081 and each person who receives other property by a transfer other than from the administration of the decedent's probate estate that was subject to satisfaction of the decedent's debts immediately prior to the decedent's death, but only to the extent of the decedent's contribution to the value of such other property, shall be liable to account to the decedent's personal representative for a pro rata share of the value of all such property received, to the extent necessary to discharge the statutory allowances to the surviving spouse and unmarried minor children, and claims, remaining unpaid after application of the decedent's estate, including expenses of administration and costs as provided in subsection 3 of this section, and including estate or inheritance or other transfer taxes imposed by reason of the decedent's death only where payment of those taxes is a prerequisite to satisfying unpaid claims which have a lower level of priority. No proceeding may be brought under this section when the deficiency described in this subsection is solely attributable to costs and expenses of administration.

2. The obligation of a beneficiary of a nonprobate transfer or other recipient of property under subsection 1 of this section may be enforced by an action for accounting commenced within eighteen months following the decedent's death by the decedent's personal representative, a creditor of the decedent's estate, the decedent's surviving spouse or one acting for an unmarried minor child of the decedent, but no action for accounting under this section shall be commenced by any person unless the personal representative has received a written demand therefor by a creditor, surviving spouse or one acting for an unmarried minor child of the decedent. Sums recovered in an action for accounting under this section shall be administered by the personal representative as part of the decedent's estate except as provided in subsection 3 of this section.

3. The judgment in a proceeding authorized by this section shall take into account the expenses of administration of the estate including the cost of administering the additional assets obtained in the proceeding, and the costs of the proceeding to the extent authorized by this subsection. If the proceeding is commenced by a person other than the personal representative, the court may order

the costs of the proceeding, other than attorney fees, to be charged against the amounts recovered and recoverable as a result of the proceeding. If the proceeding is commenced by the personal representative, the court may order the costs of the proceeding, including attorney fees, to be treated as expenses of administration of the estate.

4. After an action for accounting has been commenced under this section, any party to the proceeding may join and bring into the action for accounting other persons who are liable to account to the decedent's personal representative under subsection 1 of this section.

5. This section shall not affect the right of any transferring entity, as defined in section 461.005, to execute a direction of the decedent to make a payment or to make a nonprobate transfer or other transfer described in subsection 1 of this section on death of the decedent, or make the transferring entity liable to the decedent's estate, unless before the payment or transfer is made the transferring entity has been served with process in a proceeding brought under this section and the transferring entity has had a reasonable time to act on it.

6. This section does not create a lien on any property that is the subject of a nonprobate transfer or other property not subject to probate administration, except as a lien may be perfected by way of attachment, garnishment or judgment in an accounting proceeding authorized by this section.

7. An action for accounting under this section may be filed in the probate division of the circuit court, and the probate division of the circuit court may hear and determine questions and issue appropriate orders in an action for accounting under this section.

8. The recipient of any property held in trust that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, and the recipient of any property held in joint tenancy with right of survivorship that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, are subject to this section, but only to the extent of the decedent's contribution to the value of the property.

9. This section shall apply to all actions commenced after August 28, 1995, except that with respect to decedents dying prior to August 28, 1995, an action for accounting under this section may be commenced within two years following the decedent's death.]