HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1237 Probate Procedures
SPONSOR(S): Civil Justice & Courts Policy Committee; Hukill
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1544

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	14 Y, 0 N, As CS	Bond	De La Paz
2)	Insurance, Business & Financial Affairs Policy Committee		Marra	Cooper
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill amends probate laws to:

- Require the lessor of a safety-deposit box to copy wills, burial instructions, and other documents removed by a relative after the death of the lessee of the box.
- Allow early filing of a caveat (a document filed with the clerk asking to be notified should a probate case be filed regarding an individual).
- Define formal and informal notice.
- Allow a surviving spouse to elect to take a one-half tenancy in common, rather than a life estate, should the decedent attempt a devise of the homestead property that is prohibited by the constitution.
- Provide that a surviving spouse may disclaim the transfer of homestead property.
- Provide for transfers of homestead property into trusts or other forms of ownership that will not run afoul of the constitutional prohibition on alienation of the homestead.
- Allow a probate court to set aside a marriage based on fraud, duress or undue influence after the death of one spouse, thereby affecting the distribution of the estate.
- Applicable to this year's repeal of the federal estate tax, allow a court to modify the distribution under a will where the will erroneously includes estate tax-related formulas.
- Make technical and clarifying changes to probate laws.

This bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of an effective date of October 1, 2010, except that the provision on judicial construction of a will in light of the repeal of the federal estate tax is made effective upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Probate is the process for marshalling of the assets of a deceased person, paying debts, and distributing property to heirs.

Safe-Deposit Boxes

A safe-deposit box is a safe-deposit box, vault, or other receptacle leased by a financial institution to a person seeking the protection of such a box. Individuals use such boxes to protect valuable items and papers from theft or destruction. Individuals commonly keep death-related valuable papers such as wills, codicils, burial instructions, powers of attorney, and life insurance policies in such boxes.

It is common for survivors to need access to the safe-deposit box before the opening of a probate estate and appointment of a personal representative. Documents in the box may include burial instructions or a will, which may name a personal representative, who generally initiates the probate case. Section 655.935, F.S., provides that, if the lessor of a safe-deposit box is presented with proof of death of the lessee of the box, the lessor must give access to a spouse, parent, adult descendent, or person named in a copy of the will to access the box for the limited purpose looking for a will, deed to a burial plot, burial instructions, or life insurance policy. Current law allows such persons to remove any of those documents.

There is no requirement for the lessor to retain an inventory, delivery record, or any other record of documents removed from the safe-deposit box or a record of who removed those items. While the lessor may keep an entry log of persons gaining access, this would not indicate what, or even if, documents were removed. This lack of control may result in no copies of the documents (i.e., a will, burial deed or life insurance policy) being available to the personal representative on his or her subsequent opening of the safe-deposit box. When the personal representative accomplishes an "initial opening" (and inventory) he or she may not know such a document was in the safe-deposit box at the decedent's death, nor to whom it was delivered. This lack of control may lead to lost or fraudulently destroyed documents.

Section 2 of this bill amends s. 655.935, F.S., to require the lessor to make a complete copy of any document removed from the box, together with a record of who took the document. A lessor may charge reasonable fees for costs involved in the supervision and copying.

Caveats

A caveat is a document filed with the clerk asking the clerk to give notice should a probate estate be filed in the future. Creditors and beneficiaries file caveats in order to protect their interest in an estate. Current law provides that a caveat may not be filed until after death, making a caveat filed prior to death invalid. Current law also requires that a caveat contain certain information. This bill amends s. 731.110, F.S., to amend the law regarding caveats, to:

- Provide that the caveat of an interested person may be filed prior to death. Any such caveat is only effective for 2 years.

- Remove the requirement that a caveat include the decedent's social security number, last known residence address, date of birth, and a statement of the interest of person filing the caveat.

Notice under Probate Code

Attorneys practicing in probate law report that there is some confusion as to the form and requirements of notice under the Probate Code. There are two basic forms of notice: formal and informal. Formal notice is defined by Probate Rule 5.040(a)(1). Similar to how a civil summons and complaint is served, formal notice under the Probate Code requires delivery of two separate documents, a copy of the initial pleading seeking relief (analogous to a civil complaint), and a separate form notifying the recipient that he or she has 20 days to reply and may lose by default if no reply is made (analogous to a civil summons). Unlike in civil procedure, formal service under the Probate Code may be made by certified mail, return receipt requested. Informal notice under the Probate Code is defined like informal notice in civil actions, that is, by mail or hand delivery. See Probate Rules 5.040(b) and 5.041(b).

This bill amends the definitions of formal notice and informal notice to specifically refer to the related Probate Rules.

Section 731.301(2), F.S., provides that formal notice is sufficient to acquire jurisdiction over a person to the extent of such person's interest in the estate. However, as written this does not limit jurisdiction to only probate matters. This bill amends s. 731.301(2), F.S., to limit jurisdiction over a person served by formal notice under the Probate Code to only the person's interest in the estate or in the decedent's protected homestead.

This bill also amends references to notice in probate matters in ss. 731.110, 733.2123, 733.608 and 735.203, F.S., to conform.

Devise and Descent of Homestead Property

A "devise" is a testamentary direction to distribute property to an heir. Article X, s. 4(c) of the state constitution protects a surviving spouse from having his or her home devised to someone else. The applicable portion of that subsection reads:

> (c) The homestead shall not be subject to devise if the owner is survived by a spouse or minor child, except that the homestead may be devised to the owner's spouse if there be no minor child.

In most deaths, this provision does not affect the parties because, in most instances, the marital home is held as a tenancy by the entireties, and the surviving spouse takes the property through the tenancy by the entireties[1] without the necessity of a devise of the property.

The constitutional restriction on devise does not address who takes title to the property upon the death of the owner of the homestead when it applies. Current law at s. 732.401(1), F.S., addresses descent (transfer of property to descendants) of homestead property where no devise is allowed by providing that the

> homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

In splitting the present and future property interests of the homestead, the benefits and burdens of ownership are split between the spouse's life estate and the descendants' remainder. The spouse has the exclusive right of occupancy and is responsible for all of the ordinary expenses of ownership, such as repairs, association fees and taxes; the interest portion of mortgage payments; recurring insurance premiums; and most special assessments.[2] The descendants are responsible for principal mortgage payments and may be protected from any waste of the spouse. The spouse may only sell the life estate, measured by his or her own life, unless joined by the descendants.

With recent changes in home values, property insurance and property taxes, it is reported that current law can create great burdens on the surviving spouse and the lineal descendants regarding the expenses and upkeep of the property which can result in the life estate becoming a burden on the very people the law is designed to protect.[3]

This bill amends s. 732.401, F.S., to provide that a surviving spouse may elect to take an undivided one-half interest as a tenant in common, with the other half being divided among the decedent's children living at the time of the decedent's death, instead of taking a life estate. The election must be made within 6 months after the decedent's death, and is not effective unless the probate court determines that the election is in the best interest of the surviving spouse. The bill provides the form of the election. The bill also provides that expenses of the property are allocated as a life estate until the time of election, and are allocated as a tenant in common after.

The bill does not change or alter current law regarding life estates and tenancy in common. There are differences between life estates and tenancy in common laws that appear important to reviewing this election:

- A life tenant is required to pay all costs of ownership, whereas the costs of ownership are split equally among tenants in common.

- Partition is a legal means by which property may be split between the owners, but where the property cannot be split (and most homes cannot be split), the court may order the property sold at auction and the proceeds split between the owners. A life tenant may not file for partition, whereas any owner of a tenancy in common has the right to file for partition.

- A life tenant has exclusive possession of real property, the remaindermen have no current right to occupy the real property. In a tenancy in common, every joint owner of the real property has the right to occupy the property.

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[1] A tenancy by the entireties is form of real estate ownership that may only be held by a legally married couple. Upon the death of one spouse, full ownership of the property immediately vests in the other spouse by operation of law. Tenancy by the entireties is presumed if the deed simply identifies the owners as "husband and wife."

[2] Jeffrey A. Baskies, *The New Homestead Trap: Surviving Spouses are Trapped by Life Estates They No Longer Want or Can Afford*, 81 Fla. Bar J. 69 (June 2007). *See also* ss. 738.701-.705 and 738.801, F.S.

[3] *Id*.

The bill also amends the guardianship law at s. 744.444, F.S., to add that a guardian may make the election to take an interest as a tenant in common without court approval.

Disclaimer by Surviving Spouse

Chapter 739, F.S., provides for disclaimer of property. The concept of disclaimer is simple: no person should be compelled to accept property. In its simplest form, any person who is supposed to inherit property may disclaim it. A person who disclaims is treated as if he or she did not survive the decedent, and the property passes to whoever would have inherited the property in such a scenario.

To avoid the problems related to devise and descent of homestead property under s. 732.401, F.S.,[4] some practitioners have attempted to use disclaimers to cure invalid homestead devises. Courts have disagreed on whether a disclaimer may be used in this way. While some courts have held that a surviving spouse's disclaimer of a life estate resulting from an invalid homestead devise does not divest the decedent's descendants of their vested remainder interests,[5] at least one circuit court has reached an opposite result, holding that the spouse's disclaimer would divest the decedent's descendants of their interests and give effect to the otherwise invalid devise.[6]

This bill amends s. 732.401, F.S., to provide that disclaimer may not be used to divest remaindermen of their right to a remainder estate. This bill also amends s. 732.4015, F.S., to provide that if an interest in homestead property has been properly devised to the surviving spouse, and the surviving spouse disclaims the property, the disclaimed property interest transfers according to the disclaimer statute as ch. 739, F.S.

Certain Lifetime Transfers of Homestead Property

Article X, s. 4(c) of the constitution allows the owner of homestead real estate, joined by the owner's spouse if married, to alienate homestead property by mortgage, sale or gift. The constitution only prohibits devises of homestead property if the owner is survived by a spouse or minor child. The term "devise" is defined in the Florida Probate Code, not in the Florida constitution. Section 732.201(10), F.S., defines a "devise" as a testamentary disposition of real or personal property.

Two Florida appellate cases have invalidated attempted dispositions of homestead property made by lifetime conveyances in which the transferors retained certain rights in the homestead property either by deed or by trust.[7] Although in each case the trust or deed terms provided for a specific disposition of the homestead property upon the settlor's death, the settlor retained the right to direct a conveyance of the title and the entire beneficial interest to other persons (including the settlor) at the settlor's pleasure during his or her lifetime. Thus the interest in the homestead property that was conveyed was not a vested right in the property, but a contingent interest subject to the right of the settlor to direct the trustee to convey the property to others during the settlor's lifetime. Because of the retention of the entire beneficial estate in the settlor during life, in each case the trust instrument was in effect an attempted testamentary disposition of homestead property in contravention of the restrictions set forth in the Florida constitution.

Based on these two cases, practitioners in this area, including title companies and attorneys engaged in estate planning, are not certain as to what the courts of this state will hold regarding certain types of lifetime transfers of homestead property.

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[4] *See* Discussion of Devise and Descent of Homestead Property, *supra* at p. 3.

[5] *See In Re: Estate of Joseph T. Ryerson, Jr.*, No. 93-307 (Fla. 15th Cir. Ct., June 17, 1993), aff'd, per curiam, No. 93-2074 (Fla. 4th DCA, July 20, 1994) *and In re: Estate of Frances N. Janien*, 12 Fla. L. Weekly Supp. 221 (Feb. 28, 2005), Case No. 502004CP000973 (Fla. 15th Cir. Ct., Dec. 6, 2004).

[6] In Re: Estate of Harry Sudakoff, No. 91-87 (Fla. 12th Cir. Ct., Mar. 25, 1994), aff'd, per curiam, No. 94-02102 (Fla. 2d DCA, Mar. 10, 1995).

[7] *Johns v. Bowden*, 68 Fla. 32, 66 So. 155 (1914) (deed containing terms of trust); *In re Estate of Johnson*, 398 So.2d 970 (Fla. 4th DCA 1981) (quitclaim deed to trustee of revocable trust).

This bill creates .s 732.4017, F.S., to address inter vivos (lifetime) transfers of real property. It provides that, so long as the transferor of the property does not retain the power to revoke the transfer or retake title to the property, a transfer of property is not a devise of real property. If the transfer is to a trust, the transfer will not be a devise so long as there is no right of revocation. The bill specifies that a power to alter a trust or its beneficiaries is not a right of revocation.

The bill also provides that a transfer of homestead property will not be considered a devise of the property even if the transferor retains a separate interest in the property, the interest transferred does not become a possessory interest until some date in the future (whether specific or contingent), or the interest transferred may lapse.

Spousal Rights Procured by Fraud, Duress or Undue Influence

A surviving spouse is entitled to significant financial benefits under Florida law, including rights in homestead property, elective share rights, the right to take as a pretermitted spouse, and priority in preference during the selection of decedent's personal representative.

Under current law, a marriage can be set aside by a court if the marriage is either void or voidable. A marriage is void under Florida law if:

- It is a bigamous marriage, s. 826.01, F.S.;
- It is an incestuous marriage, ss. 741.21 and 826.04, F.S.;
- It is a marriage between persons of the same sex, s. 741.212, F.S.
- It is a common-law marriage entered into after January 1, 1968, s. 741.211, F.S.; or
- One or both parties lack the requisite mental capacity at the time the marriage is actually contracted, *Kuehmsted v. Turnwall*, 138 So. 775, 778 (Fla. 1932); *Bennett v. Bennett*, 26 So. 2d 650, 651 (Fla. 1946).

A marriage is voidable under Florida law if:

- Consent to the marriage was obtained by undue influence, *Arnelle v. Fisher*, 647 So. 2d 1047, 1048-49 (Fla. 5th DCA 1994);
- Consent to the marriage was obtained by duress, *In re Ruff's Estate*, 32 So. 2d 840, 842 (Fla. 1947) (where party alleged that he was forced to marry under threats of prosecution and violence, the marriage was voidable); *Tyson v. State*, 90 So. 622, 623 (Fla. 1922) (evidence showed that marriage was procured by fraud and effected as a result of coercion); or
- Consent to the marriage was obtained by fraud, *Cooper v. Cooper*, 163 So. 35 (Fla. 1935) (marriage voidable where the marriage ceremony was procured by fraud).

Florida case law has made it clear that an action challenging a marriage can be maintained after the death of the spouse only if the marriage is void.[8] A voidable marriage, however, may be attacked only in a direct proceeding during the life of the parties.[9] Upon the death of either party, a voidable marriage is deemed valid from the outset.[10] Consequently, a voidable marriage cannot be attacked after the death of either spouse. The result is that a surviving spouse who procured a marriage by undue influence, duress or fraud is still entitled to all of the legal benefits of a surviving spouse, and the surviving family members cannot challenge the marriage after the death of one spouse.

In an action challenging a marriage, a party seeking to uphold the marriage may prove ratification of the marriage. Ratification is any action upholding the validity of the marriage. For instance, a spouse may allege that his or her marriage is voidable because he or she was so intoxicated at the marriage ceremony that he or she could not have consented to the marriage. However, if that spouse

[8] *Kuehmsted v. Turnwall*, 138 So. 775, 777 (Fla. 1932).
[9] *Arnelle*, 647 So. 2d at 1048 (citing *Kuehmsted*, 138 So. at 777).
[10] *Id.*

subsequently cohabitates with the spouse and acts as if the marriage is valid, the spouse has ratified the marriage.[11] Similarly, if a spouse was defrauded into entering into a marriage, later learns of the fraud, but stays in the marriage and continues to act as if married despite knowledge of the fraud, the spouse has ratified the marriage.[12]

This bill creates s. 732.805, F.S., providing a means for beneficiaries to challenge the decedent's marriage on the grounds of fraud, duress or undue influence. If the court finds that the marriage was procured by the surviving spouse through fraud, duress or undue influence, the surviving spouse is not entitled to:

- Elective share,
- Family allowance,
- Preference in appointment as personal representative,
- Intestate inheritance,
- Homestead property,
- Exempt property,
- Inheritance as a pretermitted spouse, or
- Immunity from the presumption of undue influence.

Additionally, the surviving spouse is not entitled to any of the following unless such surviving spouse is specifically named in the document:

- Rights or benefits under a bond or life insurance policy, or
- Rights or benefits under a will, trust or power of appointment.

Where the court finds that the marriage was procured by fraud, duress or undue influence, the probate court must distribute the property of the decedent as if the surviving spouse had predeceased the decedent spouse.

The person contesting the marriage has the burden of proof as to fraud, duress or undue influence. The surviving spouse has the burden of proving the defense of ratification, if appropriate. The prevailing party is entitled to attorney's fees.

An insurance company, bank or other obligor who makes a payment according to the terms of its policy or agreement is not liable for wrongful payment unless the insurance company, bank or other obligor had actual notice of a possible claim for fraud, duress or undue influence. Notice must be in writing and must be delivered in a manner reasonably suitable under the circumstances and likely to result in receipt. Notice must be addressed to an officer or manager of a Florida entity, or directed to the principal office of an out-of-state entity. Notice given to a financial institution or insurance company is not effective until at least 5 days have elapsed; notice to any other entity is effective when it is given. A notice must include the name, address of the obligee or insured, together with the taxpayer identification number of the obligee or the account or policy number.

This bill creates a 4-year statute of limitations, starting from the date of the decedent's death, to file a case alleging fraud, duress or undue influence in the procurement of the marriage.

Judicial Construction of a Will with Federal Tax Provisions

Wills and trust agreements (both revocable and irrevocable) frequently contain provisions designed to eliminate, minimize or defer payment of the federal estate tax and the federal generation-skipping transfer tax. These provisions are usually phrased not in terms of fixed-dollar amounts but, instead, in terms of a formula intended to produce the optimal result under the law prevailing at the time for application of the formula (usually, but not always, at the death of the testator, testatrix or trust settlor).

[11] *Mahan v. Mahan*, 88 So.2d 545 (Fla. 1956).
[12] *See Ball v. Ball*, 36 So.2d 172 (Fla. 1948).

In 2001, Congress enacted a general phase-out of the estate tax (and related taxes such as the gift tax and the generation skipping tax), although the phase out is only applicable for 2010, with such taxes returning (with different rates and exemptions) in 2011. For poorly drafted wills that do not take into account the suspension of the taxes, it is unclear how such formulas in wills will be interpreted. For example, a formula phrased in terms of "the most I can pass free from estate taxes at my death" can result in an unintended disinheriting of the surviving spouse if the decedent's children are to receive the formula amount (in 2010, everything) and the surviving spouse is to receive the balance (in 2010, nothing). Section 732.6005, F.S., provides that the testator's intent controls over the legal effect of the testator's dispositions. It is likely that one or more affected beneficiaries under these poorly drafted wills would file an action for judicial determination of the testator's intent.

This bill creates s. 733.1051, F.S., to create a means for judicial construction of a will that includes federal tax provisions. If a will contains a formula-based distribution where the formula is based on federal estate tax provisions, the court may construe the will to reflect the testator's probable intent. This section applies retroactively to January 1, 2010. A personal representative that withholds distributions pending a determination under this section is not liable to any beneficiary for damages related to the delay in distribution.

Other

Section 1 of this bill amends s. 655.934, F.S., to correct the reference to durable power of attorney, which is the correct term as created in s. 709.08, F.S.

Section 6 of this bill amends s. 732.2125, F.S., to clarify that, when an attorney in fact or a guardian makes an elective share election, the court must first approve the election as being in the best interest of the surviving spouse.

Sections 10 and 17 amend ss. 732.608 and 736.1102, F.S., to reference the "laws" related to paternity rather than to the "rules." The term "rules" refers to administrative rules, and is inappropriate for use when a law is referring to other laws.

Section 13 amends s. 733.107, F.S., to provide that, in a hearing contesting the validity of a will, the self-proof of the will[13], or oath of an attesting witness[14], is admissible and is prima facie proof of the formal execution and attestation of the will.

Section 14 amends s. 733.2123, F.S., to remove the requirement that a copy of the will be attached to the formal notice of petition for administration.

B. SECTION DIRECTORY:

Section 1 amends s. 655.934, F.S., making conforming changes in section relating to the effect of death or incapacity of a lessee of a safety deposit box.

Section 2 amends s. 655.935, F.S., regarding procedures on death of a lessee of a safety deposit box.

Section 3 amends s. 731.110, F.S., regarding caveats.

Section 4 amends s. 731.201, F.S., regarding definitions applicable to the probate laws.

[13] A will must be signed by two witnesses who witness the testator and each other sign to be valid. Section 732.503, F.S., provides a form for use in signing a will whereby a notary will witness the signatures of the testator and the two witnesses and signs a form saying that the will was signed by the testator and witnesses in the presence of each other. This is known as the self-proof. A self-proved will can be admitted to probate without the oath of an attesting witness.

[14] A will must be signed by two witnesses who witness the testator and each other sign to be valid. Where this was done without a notary present to execute the self-proof, a person attempting to admit the will to probate must obtain an oath signed by one of the witnesses certifying that the will was properly executed.

Section 5 amends s. 731.301, F.S., regarding notice provisions applicable to the probate laws.

Section 6 amends s. 732.2125, F.S., regarding rights of election.

Section 7 amends s. 732.401, F.S., regarding descent of homestead property.

Section 8 amends s. 732.4015, F.S., regarding devise of homestead property.

Section 9 creates s. 732.4017, F.S., regarding transfers of homestead real property.

Section 10 amends s. 732.608, F.S., regarding construction of terms applicable to intestate succession.

Section 11 creates s. 732.805, F.S., regarding spousal rights procured by fraud, duress or undue influence.

Section 12 creates s. 733.1051, F.S., regarding judicial construction of a will in light of the repeal of the federal estate tax.

Section 13 amends s. 733.107, F.S., regarding evidence in will contests.

Section 14 amends s. 733.2123, F.S., removing a requirement to attach a copy of a will to a certain probate notice.

Section 15 amends s. 733.608, F.S., making conforming changes in section on powers of a personal representative.

Section 16 amends s. 735.203, F.S., making conforming changes in section on notice required for summary administration.

Section 17 amends s. 736.1102, F.S., regarding construction of terms applicable to intestate succession.

Section 18 amends s. 744.444, F.S., making conforming changes in section on powers of a guardian.

Section 19 provides an effective date of October 1, 2010, except that the provision on judicial construction of a will in light of the repeal of the federal estate tax is made effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of this bill will slightly increase the administrative burdens on lessors of safety deposit boxes, which will be passed on as higher fees payable by lessees and their families.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 16, 2010, the Civil Justice & Courts Policy Committee adopted 3 amendments to this bill. The amendments:

- Clarify and expand on the provisions regarding notice to, and liability of, obligors relating to payments made with and without notice of a complaint seeking to set aside a marriage based on fraud, duress or undue influence.
- Added the section regarding admissible evidence in cases involving a will contest.
- Added the section regarding judicial construction of a will in light of the estate tax repeal.
- Amended the effective date.

The bill was then reported favorably as a committee substitute.