

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2057

2005 SENATE JUDICIARY

SB2057

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2057

Senate Judiciary Committee

Conference Committee

Hearing Date January 11, 2005

Tape Number	Side A	Side B	Meter #
1	x		1427 -1969 1105
Committee Clerk Signature		<i>Maria L. Salbury</i>	

Minutes: Relating to collection of the estate of a decedent by affidavit.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen. Trenbeath Dist #10, introduced the bill as the prime sponsor, representing my local probate bar in Pembana Co. (meter 1427) The last time this Century Code was changed was when it was adopted in 1973. The original dollar amount at that time was \$10,000 (1973) and we would like to change it to \$50,00 (2005)

Discussion of process (meter 1669) **Sen. Nelson** questioned a singular usage of wording-clerical (1765)

Malcom Brown - Testified he was in support of bill.

Testimony in Opposition of the Bill:

None

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Senate Judiciary Committee

Bill/Resolution Number SB 2057

Hearing Date January 11, 2205

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Senator Syverson moved to pass and **Senator Hacker** seconded all were in favor none oppose.

Carrier: **Senator Syverson**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 01/11/05
Roll Call Vote #: 1

**2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2057**

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move to Do Pass

Motion Made By Senator Syverson Seconded By Senator Hacker

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Syverson

If the vote is on an amendment, briefly indicate intent:

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REPORT OF STANDING COMMITTEE (410)
January 11, 2005 10:58 a.m.

Module No: SR-06-0252
Carrier: Syverson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2057: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2057 was placed on the Eleventh order on the calendar.

John T. Thompson, chz.

2005 HOUSE JUDICIARY

SB 2057

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2057

House Judiciary Committee

Conference Committee

Hearing Date 2/28/05

Tape Number	Side A	Side B	Meter #
1	xx		0-5.4
1		xx	22.3-24.9
2	xx		13.3-20.8

Committee Clerk Signature *Dawn Penrose*

Minutes: 13 members present, 1 member absent (Rep. Bernstein).

Chairman DeKrey: We will open the hearing on SB 2057.

Sen. Tom Trenbeath: Sponsor, support, explained the bill. I am the prime sponsor of this piece of legislation at the request of members of the Practicing Bar in the Probate area of law. When the Uniform Probate Code was adopted by this legislature in 1973, it contained all the provisions you presently see in front of you that constitutes SB 2057. However, the area of change is with respect to gathering small estates, the assets of small estates. At the time this law was passed, in 1973, that said estates that did not exceed the amount of \$5,000. That was subsequently raised about 20 years ago to \$15,000 and now of course, it would be appropriate to raise it again. What this really is, is it protects small estates from incurring legal fees that would, in a lot of cases, deplete the assets of the estate almost totally. What it says is that if after 30 days after death, no probate has been filed, no one has come forward to be appointed personal representative for the estate, and if the value of the estate does not exceed \$50,000, under this

bill, any person that is related or entitled to the estate, they put together an affidavit that recites those facts, that he is a descendant of the decedent, that the estate does not exceed \$50,000 and that no personal representative has been appointed, may collect the assets of the estate from those people that hold them. They then distribute the assets in accordance with his/her own wishes. The fact of the matter is, the reason this was brought to light, and it is happening more and more often, is you have a person who dies with \$40,000 in assets. Five kids, seven kids, or no kids, and then you have aunts, uncles, cousins, that formal probate would have to be begun, all the provisions would have to be taken care of, you'd have to go through the court system and guess what, by the time you are done, the estate is almost nonexistent. So in the Senate, when we heard this bill, we had the Probate Bar testify in favor of it and no one testified against it. We'd ask your favorable consideration also.

Chairman DeKrey: All you are doing is adjusting for inflation.

Sen. Tom Trenbeath: Yes.

Representative Koppelman: Do you know how this compares with other states. Even \$50,000 sounds low to me, when you look at today's dollars in the amount of the estate.

Sen. Tom Trenbeath: We're kind of ahead of the curve on this one. The one we checked on was Minnesota and speaking from recollection, I believe they presently have \$30,000. We're actually looking to the future here.

Representative Klemin: Let's say we have a situation where I owe somebody \$10,000 on a promissory note and it's due on demand, and it happens to be my father, he wanted to make sure that there was something, some evidence of the loan he made to me, he dies, under subsection 1, that we're amending, I have to pay that back within 30 days after he dies.

Sen. Tom Trenbeath: You don't have to pay it back within 30 days, but subsequent to 30 days if a demand is made on you for payment, and you can make the legal argument that death constitutes demand, payable on demand, then you would pay it to the person presenting the affidavit.

Representative Klemin: Say, it's for example, my older brother. He didn't get a \$10,000 loan from my dad. So would this say that my brother demand that I pay that \$10,000 to him.

Sen. Tom Trenbeath: Yes it does; but however, under the Probate Code, of course, if you didn't feel that that was an appropriate situation, you could always apply to the court to become personal representative. You can always formalize it.

Representative Klemin: Can I do that after he has made the demand under this section.

Sen. Tom Trenbeath: I think you have to pay it to him, and then formalize it.

Representative Klemin: The reason I haven't taken him to court, for instance, I don't have the money.

Sen. Tom Trenbeath: There's no answer that I'm going to give you that you're going to like. You keep moving the target.

Representative Klemin: Just testing your knowledge.

Sen. Tom Trenbeath: I didn't say I was a member of the Probate Bar.

Representative Klemin: I guess I'm wondering if there isn't another problem with this section.

Sen. Tom Trenbeath: Well, there may well be. I'm not aware of one, I'm not aware of that situation arising, where it's caused a problem; because presumably if that were a problem, we'd have been hearing about it here also. That's been law for 32 years now.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

Sen. Dave Nething: I would just comment briefly that, in my experience, in practicing law, which I no longer do, but I did up until the year 2000, this was an area that was very, very beneficial to the heirs trying to settle an estate at the \$15,000 level. At one time, it was \$10,000, and then we went to \$15,000. Now to go to \$50,000 is realistic in this day and age, but it is such a good tool to have because the cost is so minimal to those settling an estate.

Representative Klemin: What if the decedent owes money to somebody himself. Is the person that's going to claim the \$50,000 able to take it free and clear of that debt.

Sen. Dave Nething: I think the creditors had their opportunity, this is the same with current law, it's the same situation whether at \$15,000 or \$50,000. All this does is increase the amount.

Representative Klemin: Well, true...

Sen. Dave Nething: It doesn't change the law.

Representative Klemin: But \$15,000 isn't nearly as much as \$50,000, so under the current law, that estate would have to be probated and there would be a notice published to notify creditors, that allowed them to file claims. By changing this to \$50,000, now we're dealing with quite a bit more money and we don't have to publish that notice to creditors to notify them that the person died, with up to \$50,000 at least, that potentially the money that's not going to be used to satisfy those creditor's claims.

Sen. Dave Nething: There's no question that the amount is going to be different, but again, under current law, other than the fact that you're changing the dollar amount, I don't know what

amount would solve the problem, whether it's \$40,000 or \$30,000 or \$25,000, you'd still have that problem that you've described. I don't know how you would get away from it.

Chairman DeKrey: Thank you.

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to SB 2057.

Representative Delmore: I move a Do Pass.

Representative Koppelman: Seconded.

13 YES 0 NO 1 ABSENT DO PASS CARRIER: Rep. Kretschmar

Date: 2/28/05
Roll Call Vote #: 1

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2057**

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By Rep. Delmore Seconded By Rep. Koppelman

Total (Yes) 13 No 9

Absent

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

**SB 2057: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).** SB 2057 was placed on the
Fourteenth order on the calendar.