

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

1408

2007 HOUSE JUDICIARY

HB 1408

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1408

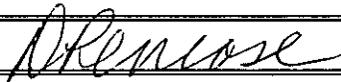
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/5/07

Recorder Job Number: 2745, 2757

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1408.

Rep. Stacey Dahl: Explained the bill, sponsor (see attached testimony).

Rep. Klemin: I notice that what they are doing here, is amending the Uniform Probate Code, what are the other states doing who have adopted the Uniform Probate Code.

Rep. Dahl: In my testimony, in footnote 2, it says the other existing statutes from the other states, and none of those are identical. Some don't require the player forfeit the property, but many of them do.

Rep. Klemin: What is the procedure that one would follow to have a determination made that the interests of that person be voided. Some might be done automatically and some done in probate court.

Rep. Dahl: My understanding was that was set out in the code. That you could find it by a court finding conclusively that the convicted individual did intentionally and feloniously kill the victim, under subsection 7 of the code that's being amended. It says in the absence of a conviction the court, upon petition of the interested person, must determine whether under the preponderance of evidence standard, the individual would be found criminally accountable for

the felonious and intentional killing of a decedent. It reads to me that you can either have the criminal conviction or the court can, in a civil context, make that determination as well.

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

(Reopened later in the same day)

Chairman DeKrey: We will take a look at HB 1408. What are the committee's wishes.

Rep. Wolf: I move the Dahl amendments.

Rep. Griffin: Second.

Chairman DeKrey: We will take a voice vote. Motion carried.

Rep. Delmore: Can you explain the amendments.

Rep. Dahl: Explained the amendments.

Rep. Boehning: Does that include life insurance, as well, or is it just physical property.

Rep. Dahl: You can have real property.

Chairman DeKrey: Bank accounts, everything.

Rep. Klemin: In the life insurance issue, where the beneficiary killed the insured, and actually the probate court does that now. The life insurance company recognized that the policy had to be paid, but didn't know who to pay it to.

Chairman DeKrey: We now have the bill before us as amended.

Rep. Wolf: I move a Do Pass as amended.

Rep. Delmore: Second.

13 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Boehning

House Amendments to HB 1408 (70641.0101) - Judiciary Committee 02/05/2007

Page 1, line 1, replace "subsection" with "subsections" and after "3" insert "and 4"

Page 1, line 4, replace "Subsection" with "Subsections" and after "3" insert "and 4"

Page 1, line 5, replace "is" with "are"

Page 1, line 15, overstrike ", transforming the interests of the decedent" and overstrike "into"

Page 1, line 16, remove "a sole interest in the property"

Page 1, after line 16, insert:

- "4. The ~~severance voided interest~~ under subdivision b of subsection 3 does not affect any third-party interest in property acquired for value and in good-faith reliance on an apparent title by survivorship in the killer unless a writing declaring the ~~severance voided interest~~ has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property that are relied upon, in the ordinary course of transactions involving ~~such~~ the property, as evidence of ownership."

Renumber accordingly

Date: 2/5/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1408

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Wolf Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Boehning

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

REPORT OF STANDING COMMITTEE

HB 1408: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1408 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection" with "subsections" and after "3" insert "and 4"

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Renumber accordingly

2007 SENATE JUDICIARY

HB 1408

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1408

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 27, 2007

Recorder Job Number: 3996 and 3998

Committee Clerk Signature *Maria L. Solbey*

Minutes: Relating to the effect of a homicide on probated property.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

Rep. Stacy Dahl, Dist. #42 Introduced the bill and gave her testimony – Att. #1

Sen. Nelson spoke to (meter 4:26) Intentional and Felonious “killing while insane” is still out there? Would this bill apply to those who plead insanity? The current statute is not set up this way.

Sen. Olafson stated, why has this not been addressed before? **Rep. Dahl** replied that she learned this in her first property law class and at that time thought it a good bill. **Sen. Nelson** stated that perhaps next session she could fix the “insanity” portion.

Sen. Nething asked her to walk through the bill (meter 7:26) and explain it, she started at subsection 3.

Testimony Against the bill:

None

Testimony Neutral to the bill:

None

Senator David Nething, Chairman closed the hearing.

Recorder Job Number: 3998

Sen. Lyson made the motion to Do Pass HB 1408 and **Sen. Olafson** seconded the motion.

All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE

HB 1408, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1408 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1408

Good Morning Mr. Chairman and Members of the House Judiciary Committee,

HB 1408 is a bill that addresses the effect of homicide on property that is held in joint tenancy. There are two central ways to own property with at least one other party. First, property may be held in what is referred to as a tenancy in common. This is held by two or more persons, in which each has an "undivided interest" in the property and all have an equal right to use the property, even if the percentage of interests are not equal. The second approach, unlike a tenancy in common, is a joint tenancy- which provides that each party owns an undivided interest in the entire property and the right of survivorship. The right of survivorship means that upon the death of one joint tenant, the other holds title to it all.

The way the law in North Dakota is currently written gives that if a person is found to have intentionally and feloniously killed another joint tenant, the relationship then severs from a joint tenancy to a tenancy in common. In effect, this means that the murderer still gets half of the property, even though through his wrongful actions have procured the death of another. Although rare in North Dakota, situations of murder between joint tenants have arisen.¹

North Dakota law differs from some states as well as the common law on this issue-- they require that the slayer forfeit the property instead of the severance into a tenancy in common.² The slayer rule's genesis is rooted in the principle, "Nullus Commodum capere potest de injuria sua propria--No man can take advantage of his own

¹ *In re Estate of Snortland*, 311 N.W.2d 36 (N.D. 1981) (finding where a son shot his father to death, who were joint tenants together, the result was a severance to a tenancy in common.)

² The existing statutes are: Ala.Code § 43-8-253 (1991); Alaska Stat. § 13.11.305 (1985 & Supp.1991); Ariz.Rev.Stat. Ann. § 14-2803 (1975 & Supp.1991); Ark.Code Ann. § 28-11-204 (Michie 1987) (applying only to dower and curtesy); Cal.Prob.Code §§ 250-52 (West 1991 & Supp.1992); Colo.Rev.Stat. § 15- 11-803 (1987); Conn.Gen.Stat. Ann. § 45a-447 (West Supp.1992); D.C.Code Ann. § 19-320 (1989); Fla.Stat. Ann. § 732.802 (West Supp.1992); Ga.Code Ann. § 53-4-6 (1982); Haw.Rev.Stat. § 560:2-803 (1985 & Supp. 1991); Idaho Code § 15-2-803 (1979); Ill. Ann. Stat. ch. 110 1/2, para. 2-6 (Smith-Hurd 1934); Ind.Code Ann. § 29-1-2-12.1 (Burns 1971); Iowa Code Ann. § 633.535 (West Supp.1992); Kan.Stat. Ann. § 59-513 (1983); Ky.Rev.Stat. Ann. § 381.280 (Michie/Bobbs-Merrill 1972); La.Rev.Stat. Ann. § 966 (West Supp.1992); Me.Rev.Stat. Ann. tit. 18-A, § 2-803 (West 1981); Mich.Comp.Laws Ann. § 700.251 (West Supp.1991); Minn.Stat. Ann. § 524.2- 803 (West Supp.1992); Miss.Code Ann. §§ 91-1-25, 91-5-33 (1972); Mont.Code Ann. § 72-2-104 (1991); Neb.Rev.Stat. § 30-2354 (1989); Nev.Rev.Stat. Ann. § 134.007 (Michie 1986 & Supp.1991); N.J.Stat. Ann. §§ 3B:7-1 to 7-5 (West 1983); N.M.Stat. Ann. § 45-2-803 (Michie 1991); N.C.Gen.Stat. §§ 31A-3 to -11 (1984 & Supp.1991); N.D.Cent.Code § 30.1-10-03 (1976 & Supp.1991); Ohio Rev.Code Ann. § 2105.19 (Anderson 1990); Okla.Stat. Ann. tit. 84, § 231 (West 1990); Or.Rev.Stat. §§ 112.455 to .555 (1990); Pa.Stat. Ann. tit. 20, §§ 8801-15 (1975); R.I.Gen.Laws §§ 33-1.1-1 to -16 (1988); S.C.Code Ann. § 62-2-803 (Law. Co-op 1987); S.D.Codified Laws Ann. §§ 22-16-37 to 29-9-20 (1984); Tenn.Code Ann. § 31-1-106 (1984); Tex.Prob.Code Ann. art. 41(D) (West 1980) (applying only to life insurance); Utah Code Ann. § 75-2-804 (1978); Vt.Stat. Ann. tit. 14, § 551(6) (1989); Va.Code Ann. §§ 55-401 to -414 (Michie 1991 & Supp.1992); Wash.Rev.Code §§ 11.84.010 to .900 (1987); W.Va.Code § 42-4-2 (1982); Wis.Stat. Ann. § 852.01(2)(m) (1991); Wyo.Stat. § 2-14-101 (Supp.1992).

wrong."³ The rationale for the slayer rule is the prevention of unjust enrichment coupled with the maxim that a wrongdoer cannot profit from his or her wrong.⁴ Coupled with the principles of morality and equity, to preserve a rational property transfer system, a slayer should not be able to profit from his wrongful act. Killers interrupt the regular disposition of property in three ways: First, the victim's death causes her to lose enjoyment of property; second, the killings in some cases deny victims an opportunity to revise their existing estate plans; and third, the killings potentially interrupt the order of death of the victims and slayers, thus placing property transfers conditioned on survivorship in jeopardy of being controlled by surviving slayers.⁵

As a matter of public policy, a person should not lawfully do that which tends to injure the public-- this policy objective is supported in this bill. It prevents unjust enrichment and discourages people from committing harmful acts on their community. Thus, this bill could have an effect on deterring economically motivated killings. I urge you to favorably consider this public policy concept.

³ See *Riggs v. Palmer*, 22 N.E. 188 (N.Y. 1889). This common-law rule was first extended to a slayer-beneficiary in England in 1892. See also Alison Reppy, Note, The Slayer's Bounty - History of Problem in Anglo-American Law, 19 N.Y.U. L. Rev. 229 (1942) (citing *Cleaver v. Mut. Reserve Fund Life Ass'n*, [1892] 1 Q.B. 147 (Eng. C.A.)).

⁴ See Restatement (Third) of Prop.: Wills and Other Donative Transfers § 8.4 (Tentative Draft No. 3, April 4, 2001).

⁵ See Fellows, *supra* note 16, at 493 (citing Dean Ames, Can a Murderer Acquire Title by His Crime and Keep It?, 45 Am. L. Reg. & Rev. 225, 231-232. (1897)).

Att #1
2-27-07

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