

HOUSE BILL REPORT

ESB 5297

As Reported by House Committee On:
Judiciary

Title: An act relating to the procedure for filing a declaration of completion of probate.

Brief Description: Concerning the procedure for filing a declaration of completion of probate.

Sponsors: Senators Kline and Delvin; by request of Washington State Bar Association.

Brief History:

Committee Activity:

Judiciary: 2/17/10, 2/22/10 [DPA].

Brief Summary of Engrossed Bill
(As Amended by House)

- Changes certain procedures for filing and serving a petition to challenge fees in a nonintervention probate proceeding.
- Modifies statutory forms used to notify beneficiaries of the filing of a declaration of completion of probate.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Courtney Barnes (786-7194).

Background:

Washington law provides procedures for the settlement of a deceased person's estate. One of these procedures permits a personal representative of a decedent to petition the court for nonintervention powers. Absent objections or contrary provisions in the decedent's will, the court must grant the personal representative's petition and give the personal representative nonintervention powers.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A personal representative in a nonintervention probate can close an estate without seeking a decree from a court. The personal representative must file a declaration of completion of probate (declaration) and provide notice to certain heirs, legatees, or devisees (collectively, beneficiaries) within five days of filing the declaration. The notice form provided to beneficiaries is outlined in statute and varies depending on whether the personal representative retains any powers after the declaration is finalized.

Within 30 days of the filing of a declaration, a beneficiary may petition the court to approve the reasonableness of the fees paid by or to the personal representative or for an accounting of the estate. The beneficiary filing the petition must serve a copy of the petition on the personal representative or the personal representative's lawyer. The personal representative must request the court to set a hearing time and place and provide notice of the hearing time and place to the petitioner.

If no petition is filed within 30 days of the filing of a declaration, the personal representative is automatically discharged and the declaration has the same effect as a final decree of distribution. The beneficiaries lose their ability to challenge the actions of the personal representative and all issues relating to the probate become final.

Summary of Amended Bill:

A beneficiary petitioning a court to approve the reasonableness of the fees paid by or to the personal representative or for an accounting of the estate must serve a copy of the petition on the beneficiaries who received a copy of the declaration. The responsibility of requesting the court to set a hearing time and place is shifted to the petitioner.

The petitioner must provide notice of the hearing time and place at least 10 days before the hearing on the petition. This notice must be provided to the personal representative or personal representative's lawyer, and to the beneficiaries who received a copy of the declaration. The petitioner must also file proof of service with the court within 35 days of the filing of the declaration.

If the petitioner files a petition but fails to follow the applicable service and notice requirements, the acts of the personal representative will be approved by the court and the personal representative will be discharged as provided in statute.

The statutory forms used to notify beneficiaries of the filing of a declaration are modified to incorporate changes made by the bill.

Amended Bill Compared to Engrossed Bill:

The amended bill restructures the changes made in the engrossed bill for clarity. The amended bill adds the substantive requirements contained in statutory notice forms to new subsections in the code.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill is technical and modifies certain notice and service requirements regarding the settlement of fees for a nonintervention probate. The bill clarifies the responsibility for requesting a hearing on a petition to challenge fees. Currently, the non-moving party (the personal representative) is required to request the hearing. This responsibility should be on the moving party (the petitioner). The bill requires the petitioner, instead of the personal representative, to request the hearing on the petition. The bill also modifies the statutory notice forms that are sent to beneficiaries upon the completion of probate. Some technical revisions may be needed to perfect the bill.

(Opposed) None.

Persons Testifying: Senator Kline, prime sponsor; and Luke Thomas, Washington State Bar Association.

Persons Signed In To Testify But Not Testifying: None.