

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2566

By: Kiesel

AS INTRODUCED

An Act relating to probate procedure; creating the Uniform Simultaneous Death Act; defining terms; providing certain requirement of survival; requiring certain standard of proof of survival; establishing certain rules relating to determination of death or status; providing exceptions to application of the Uniform Simultaneous Death Act; providing for the protection of payors, bona fide purchasers and other third parties; providing for determination of personal liability of certain recipients; providing obligation in case of preemption by federal law; providing for uniformity of application and construction; providing short title; providing for application of effective date; repealing 58 O.S. 2001, Sections 1001, 1002, 1003, 1004, 1005, 1006, 1007 and 1008, which relate to the Uniform Simultaneous Death Act; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1009 of Title 58, unless there is created a duplication in numbering, reads as follows:

DEFINITIONS. In the Uniform Simultaneous Death Act:

1. "Co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others;

2. "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a

dispositive, appointive, or nominative instrument of any similar type; and

3. "Payor" means a trustee, insurer, business entity, employer, government, governmental agency, subdivision, or instrumentality, or any other person authorized or obligated by law or a governing instrument to make payments.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1010 of Title 58, unless there is created a duplication in numbering, reads as follows:

REQUIREMENT OF SURVIVAL BY 120 HOURS. Except as provided in Section 6 of this act, if the title to property, the devolution of property, the right to elect an interest in property, or the right to exempt property, homestead or family allowance depends upon an individual's survivorship of the death of another individual, an individual who is not established by clear and convincing evidence to have survived the other individual by one hundred twenty (120) hours is deemed to have predeceased the other individual. This section does not apply if its application would result in a taking of intestate estate by the state.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1011 of Title 58, unless there is created a duplication in numbering, reads as follows:

REQUIREMENT OF SURVIVAL BY 120 HOURS UNDER GOVERNING INSTRUMENTS. Except as provided in Section 6 of this act, for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by one hundred twenty (120) hours is deemed to have predeceased the event.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1012 of Title 58, unless there is created a duplication in numbering, reads as follows:

CO-OWNERS WITH RIGHT OF SURVIVORSHIP; REQUIREMENT OF SURVIVAL BY 120 HOURS. Except as provided in Section 6 of this act, if:

1. It is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by one hundred twenty (120) hours, one-half (1/2) of the property passes as if one had survived by one hundred twenty (120) hours and one-half (1/2) as if the other had survived by one hundred twenty (120) hours; and

2. There are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by one hundred twenty (120) hours, the property passes in the proportion that one bears to the whole number of co-owners.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1013 of Title 58, unless there is created a duplication in numbering, reads as follows:

EVIDENCE OF DEATH OR STATUS. In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

1. Death occurs when an individual is determined to be dead under the Uniform Determination of Death Act;

2. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date, and time of death and the identity of the decedent;

3. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report;

4. In the absence of prima facie evidence of death under paragraph 2 or 3 of this section, the fact of death may be

established by clear and convincing evidence, including circumstantial evidence;

5. An individual whose death is not established under paragraphs 1 through 4 of this section who is absent for a continuous period of five (5) years, during which the individual has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier; and

6. In the absence of evidence disputing the time of death stipulated on a document described in paragraph 2 or 3 of this section, a document described in paragraph 2 or 3 of this section that stipulates a time of death one hundred twenty (120) hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty (120) hours.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1014 of Title 58, unless there is created a duplication in numbering, reads as follows:

EXCEPTIONS. The Uniform Simultaneous Death Act does not apply if:

1. The governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

2. The governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event for a stated period;

3. The imposition of a one-hundred-twenty-hour requirement of survival would cause a nonvested property interest or a power of appointment to be invalid under the Rule Against Perpetuities; or

4. The application of the Uniform Simultaneous Death Act to multiple governing instruments would result in an unintended failure or duplication of a disposition.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1015 of Title 58, unless there is created a duplication in numbering, reads as follows:

PROTECTION OF PAYORS, BONA FIDE PURCHASERS, AND OTHER THIRD PARTIES; PERSONAL LIABILITY OF RECIPIENT.

A. Protection of Payors and Other Third Parties.

1. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a person designated in a governing instrument who, under the Uniform Simultaneous Death Act, is not entitled to the payment or item of property, or for having taken any other action in good-faith reliance on the person's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under the Uniform Simultaneous Death Act. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under the Uniform Simultaneous Death Act.

2. Written notice of a claimed lack of entitlement under paragraph 1 of this subsection must be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under the Uniform Simultaneous Death Act, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by

it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate, or if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under the Uniform Simultaneous Death Act, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

B. Protection of Bona Fide Purchasers; Personal Liability of Recipient.

1. A person who purchases property for value and without notice, or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under the Uniform Simultaneous Death Act to return the payment, item of property, or benefit nor liable under the Uniform Simultaneous Death Act for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property, or any other benefit to which the person is not entitled under the Uniform Simultaneous Death Act is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under the Uniform Simultaneous Death Act.

2. If the Uniform Simultaneous Death Act or any part of the Uniform Simultaneous Death Act is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by the Uniform Simultaneous Death Act, a person who, not for value, receives the payment, item of property, or any other benefit to which the person is not entitled under the Uniform Simultaneous

Death Act is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it if the Uniform Simultaneous Death Act or part of the Uniform Simultaneous Death Act had not been preempted.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1016 of Title 58, unless there is created a duplication in numbering, reads as follows:

UNIFORMITY OF APPLICATION AND CONSTRUCTION. The Uniform Simultaneous Death Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the Uniform Simultaneous Death Act among states enacting it.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1017 of Title 58, unless there is created a duplication in numbering, reads as follows:

SHORT TITLE. This act shall be known and may be cited as the "Uniform Simultaneous Death Act".

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1018 of Title 58, unless there is created a duplication in numbering, reads as follows:

EFFECTIVE DATE.

A. An act done before January 1, 2007, in any proceeding and any accrued right is not impaired by the Uniform Simultaneous Death Act. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before January 1, 2007, the provisions remain in force with respect to that right.

B. Any rule of construction or presumption provided in the Uniform Simultaneous Death Act applies to instruments executed and

multiple-party accounts opened before January 1, 2007, unless there is a clear indication of a contrary intent.

SECTION 11. REPEALER 58 O.S. 2001, Sections 1001, 1002, 1003, 1004, 1005, 1006, 1007 and 1008, are hereby repealed.

SECTION 12. This act shall become effective January 1, 2007.

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