House Engrossed

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 133

HOUSE BILL 2326

AN ACT

AMENDING TITLE 14, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-1311; AMENDING TITLE 14, CHAPTER 2, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 14-2712; AMENDING SECTION 14-3407, ARIZONA REVISED STATUTES; RELATING TO PROBATE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 14, chapter 1, article 3, Arizona Revised Statutes, is amended by adding section 14-1311, to read:

14-1311. Standard of proof and burden of persuasion

EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, THE STANDARD OF PROOF REQUIRED IN A JUDICIAL PROCEEDING BROUGHT PURSUANT TO THIS TITLE IS THE PREPONDERANCE OF EVIDENCE. PARTIES HAVE THE ULTIMATE BURDEN OF PERSUASION AS TO MATTERS WITH RESPECT TO WHICH THEY HAVE THE INITIAL BURDEN OF PROOF.

Sec. 2. Title 14, chapter 2, article 7, Arizona Revised Statutes, is amended by adding section 14-2712, to read:

14-2712. Burdens relating to validity of governing instruments

A. A PROPONENT OF A GOVERNING INSTRUMENT HAS THE BURDEN OF ESTABLISHING PRIMA FACIE PROOF OF DUE EXECUTION IN ALL CASES.

B. IT IS A REBUTTABLE PRESUMPTION THAT A PERSON WHO EXECUTES A GOVERNING INSTRUMENT IS PRESUMED TO HAVE CAPACITY TO EXECUTE THE GOVERNING INSTRUMENT AND TO HAVE DONE SO FREE FROM UNDUE INFLUENCE AND DURESS.

C. IF THE VALIDITY OF A GOVERNING INSTRUMENT IS CHALLENGED ON THE GROUNDS OF REVOCATION BY A LATER GOVERNING INSTRUMENT, THE VALIDITY OF THE LATER GOVERNING INSTRUMENT MUST BE DETERMINED FIRST.

D. EXCEPT AS PRESCRIBED PURSUANT TO SUBSECTIONS E AND F OF THIS SECTION, A PARTY THAT CHALLENGES THE VALIDITY OF A GOVERNING INSTRUMENT HAS THE BURDEN OF ESTABLISHING THE INVALIDITY OF THAT GOVERNING INSTRUMENT BY A PREPONDERANCE OF THE EVIDENCE.

E. A GOVERNING INSTRUMENT IS PRESUMED TO BE THE PRODUCT OF UNDUE INFLUENCE AND IS INVALID IF EITHER:

1. A PERSON WHO HAD A CONFIDENTIAL RELATIONSHIP TO THE CREATOR OF THE GOVERNING INSTRUMENT WAS ACTIVE IN PROCURING ITS CREATION AND EXECUTION AND IS A PRINCIPAL BENEFICIARY OF THE GOVERNING INSTRUMENT.

2. THE PREPARER OF THE GOVERNING INSTRUMENT OR THE PREPARER'S SPOUSE OR PARENTS OR THE ISSUE OF THE PREPARER'S SPOUSE OR PARENTS IS A PRINCIPAL BENEFICIARY OF THE GOVERNING INSTRUMENT. THIS PARAGRAPH DOES NOT APPLY IF THE GOVERNING INSTRUMENT WAS PREPARED FOR A PERSON WHO IS A GRANDPARENT OF THE PREPARER, THE ISSUE OF A GRANDPARENT OF THE PREPARER OR THE RESPECTIVE SPOUSES OR FORMER SPOUSES OF PERSONS RELATED TO THE PREPARER.

F. THE BENEFICIARY OF THE GOVERNING INSTRUMENT MAY OVERCOME A PRESUMPTION OF UNDUE INFLUENCE BY A PREPONDERANCE OF THE EVIDENCE.

G. FOR THE PURPOSES OF THIS SECTION, DETERMINING IF A PERSON IS A PRINCIPAL BENEFICIARY OF A GOVERNING INSTRUMENT OR THE PREPARER OF A GOVERNING INSTRUMENT IS A QUESTION OF FACT TO BE DETERMINED BY THE TOTALITY OF THE CIRCUMSTANCES.

H. THIS SECTION DOES NOT APPLY TO THE FOLLOWING:

1. PROCEEDINGS TO DETERMINE THE VALIDITY OF A DURABLE POWER OF ATTORNEY PURSUANT TO SECTION 14-5506, SUBSECTION B.

2. PROCEEDINGS TO DETERMINE OWNERSHIP OF MULTIPLE PARTY ACCOUNTS PURSUANT TO SECTION 14-6211.

Sec. 3. Section 14-3407, Arizona Revised Statutes, is amended to read:

14-3407. Formal testacy proceedings; burdens in contested cases

In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue and heirship. Proponents of a will, ~~have the burden of establishing prima facie proof of due execution in all cases, and~~ if they are also petitioners, HAVE THE BURDEN OF ESTABLISHING prima facie proof of death and venue. ~~Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later will is entitled to probate, and~~. IF A will is opposed by a petition for a declaration of intestacy, it shall be determined first whether the will is entitled to probate.

APPROVED BY THE GOVERNOR APRIL 23, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2010.