



H.B. 107
124th General Assembly
(As Introduced)

Reps. Jones, Goodman, Britton, D. Miller, Allen, Flannery, Redfern, Barnes, Fedor, Barrett

BILL SUMMARY

- Generally excludes from an executor's or administrator's inventory of a decedent's property for purposes of probate any amount received by the decedent pursuant to federal laws providing for a legal settlement or compensation to a person for damages resulting from past inequities, injustices, or other forms of suffering caused by acts or omissions of a government entity and excluding those amounts from federal program eligibility determinations.
- Requires an executor or administrator to transfer that amount excluded from the inventory to the decedent's survivor of highest priority in the following descending order: (1) surviving spouse, (2) children, share and share alike, and (3) parents, share and share alike.

CONTENT AND OPERATION

Existing law

Under the Probate Law, within three months after the date of an executor's or administrator's appointment, unless the probate court grants an extension of time for good cause shown, the executor or administrator must file with the court an inventory of the decedent's interest in real estate located in Ohio and of the tangible and *intangible* personal property of the decedent that is to be administered and that has come to the executor's or administrator's possession or knowledge. The inventory must set forth values as of the date of death of the decedent. Any asset, the value of which is readily ascertainable, is not required to be appraised but must be included in the inventory. (R.C. 2115.02—not in the bill.)

Operation of the bill

The bill provides that notwithstanding the above described requirement of filing with the probate court an inventory that includes all of a decedent's property, generally, an executor or administrator of an estate must not include in the inventory an amount that is equal to the total amount that either was obtained by the decedent or was required to be excluded under any of the following federal laws (R.C. 2131.12(A)):

- (1) The "Alaska Native Claims Settlement Act" (see **COMMENT 1**);
- (2) Titles I and II of the "Act of August 10, 1988," concerning restitution for World War II internment of individuals of Japanese and Aleutian ancestry (see **COMMENT 2**);
- (3) The "Act of December 6, 1989," concerning agent orange settlement payments (see **COMMENT 3**);
- (4) The "Seneca Nation Settlement Act of 1990" (see **COMMENT 4**);
- (5) The "Radiation Exposure Compensation Act" (see **COMMENT 5**);
- (6) The "Act of August 1, 1994," concerning payments made to victims of Nazi persecution (see **COMMENT 6**);
- (7) Any similar federal statute or regulation that is effective on or after the effective date of this provision under which the federal government requires that an amount be excluded when determining an individual's eligibility for benefits or services under a federally assisted, means-tested program because the amount was received through a legal settlement or as restitution or other compensation by a government entity for the material or intangible damages resulting from past inequities, injustices, or other forms of human suffering caused in whole or in part by the acts or omissions of a government entity.

The bill requires the executor or administrator to transfer the amount excluded from the inventory as described above to the decedent's survivor of highest priority, as determined by which is listed first among the following (R.C. 2131.12(B)):

- (1) Surviving spouse (see **COMMENT 7**);
- (2) Children, share and share alike;
- (3) Parents, share and share alike.

If the decedent has none of the specified survivors, the executor or administrator must include the amount involved in the inventory that is filed pursuant to the Probate Law (R.C. 2131.12(C)).

COMMENT

1. This Act provided payments or property interests to Alaskan natives and native groups to settle land claims. It provides that none of specified types of payments or interests are to be considered assets or resources in determining eligibility for federal or federally assisted programs. (85 Stat. 688 (1971), 43 U.S.C.A. 1601, 1626(c), as amended.)

2. This Act authorized payments to individuals of Japanese and Aleutian ancestry as restitution for their relocation and internment during World War II. It provides that these payments are not included as income or resources in determining eligibility for certain federal benefits. (Pub. L. No. 100-383, 102 Stat. 903, as amended, 50 U.S.C.A. App. 1989, 1989b-4.)

3. This Act provides that any payments received by individuals under agent orange product liability litigation are not considered income or resources in determining eligibility for benefits under federal or federally assisted programs. (Pub. L. No. 101-201, 103 Stat. 1795, as amended.)

4. This Act provided payments to settle disputed leases of tribal lands in New York. It provides that none of the payments or income derived from the payments affect the eligibility of the Seneca Nation or members for any federal program. (104 Stat. 1292, 25 U.S.C.A. 1774, 1774f.)

5. This Act authorized restitution to individuals in Nevada, Utah, and Arizona who lived downwind of above-ground nuclear weapons tests, and to miners who worked in mines that supplied uranium to the nuclear weapons program. It provides that the amounts paid are not included as income or resources in determining eligibility for certain federal benefits. (104 Stat. 920 (1990), 42 U.S.C.A. 2210 note, as amended.)

6. This Act provides that any payments made to individuals because they were victims of Nazi persecution are to be disregarded in determining eligibility for benefits under federal or federally assisted programs based on need. (Pub. L. No. 103-286, 108 Stat. 1450, 42 U.S.C.A. 1437a note, as amended.)

7. The bill defines "surviving spouse" as an individual who establishes a valid marriage to a member (of the Public Employees Retirement System) at the time of the member's death by marriage certificate or pursuant to the provision in the Public Employees Retirement System Law that if the validity of marriage

cannot be established to the satisfaction of the Retirement Board for the purpose of disbursing any amount due under that Law, the Board may accept a decision rendered by a court having jurisdiction in the state in which the member was domiciled at the time of death that the relationship constituted a valid marriage at the time of death, or the "spouse" would have the same status as a widow or widower for purposes of sharing the distribution of the member's intestate personal property. (R.C. 2131.12(B)(1) and R.C. 145.43(A)(4) and (E)—not in the bill.)

The definition of "surviving spouse" in R.C. 145.43 applies to a surviving spouse of a member of the Public Employees Retirement System (PERS). The bill's reference to this specific definition raises the question whether the bill's order of priority provision applies *only* to a surviving spouse of a PERS member.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-15-01	p. 167

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