



## **H.B. 83**

126th General Assembly  
(As Introduced)

**Rep. Hughes**

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### **BILL SUMMARY**

- Defines "third-party distribution" as the distribution of the assets of an estate or trust by the fiduciary of the estate or trust to a person other than the beneficiary of the estate or trust pursuant to an agreement between the beneficiary and another person that requires the fiduciary to pay a percentage of an inheritance or a dollar amount to anyone other than the beneficiary.
- Establishes a procedure for approval by a probate court of third-party distributions.
- Establishes the liability of a fiduciary for making third-party distributions without prior approval of the probate court and provides for the reduction or elimination of that liability upon the court's determination that the third-party distribution was just and equitable.

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### **CONTENT AND OPERATION**

#### **Background**

When the beneficiaries of estates and trusts are determined by reference to the statute of descent and distribution (for example, when a person dies without a will), the identity and location of the beneficiaries may not be known. Furthermore, even if a beneficiary is named in a will or trust, the current location of the beneficiary may not be known. Professional "heir hunters" track down beneficiaries, who may not be aware that they are entitled to a distribution from an estate or trust. Sometimes, an heir hunter will inform a beneficiary that he or she may be entitled to a distribution and offer to reveal information concerning the

estate or trust in return for a percentage of the beneficiary's share.<sup>1</sup> The California Probate Code subjects such agreements to judicial supervision.<sup>2</sup> The Revised Code has no comparable provision.

### **Third-party distributions**

The bill governs third-party distributions made by the fiduciary of an estate or trust. The bill defines "third-party distribution" as the distribution by a fiduciary of an estate or trust of the assets of the estate or trust when both of the following apply: (1) the fiduciary makes the distribution either to the transferee of a beneficiary or to any person pursuant to an agreement, request, or instruction of a beneficiary or pursuant to a legal claim against a beneficiary, and (2) the distribution is the subject of an agreement between a beneficiary and any person that requires the fiduciary to pay a percentage of an inheritance or a dollar amount to any person other than the beneficiary. (R.C. 2109.361(A).)

### **Approval prior to third-party distribution**

The bill provides that before the fiduciary makes a third-party distribution, the fiduciary or an interested party may file an application with the probate court for approval of the distribution. The application must identify the person to whom the third-party distribution is to be made, disclose the basis for making the distribution, and include a copy of any written agreement between the affected beneficiary and the person to whom the distribution is to be made. (R.C. 2109.361(B).)

The court must hold a hearing on an application for approval of a third-party distribution. The court must serve notice of the hearing on all interested parties at least 15 days before the hearing in a manner ordered by the court. Any notice that is required or permitted under the bill must be served, and the right to receive any notice may be waived, in accordance with the Rules of Civil Procedure. (R.C. 2109.361(D).)

The probate court may find an agreement that is the subject of an application for approval to be invalid and unenforceable, in whole or in part, or the probate court may approve the third-party distribution, in whole or in part, as the court determines is just and equitable. To the extent that the application is approved, the court must determine whether the third-party distribution is properly charged solely against the beneficiary's share of the estate or trust or whether some

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<sup>1</sup> See, for example, *Estate of Wright v. Caudill* (2001), 90 Cal. App.4th 228, review denied (2001), 2001 Cal. LEXIS 6242.

<sup>2</sup> Cal. Prob. Code § 11604.

or all of the third-party distribution is properly charged against the residue of the affected estate or trust. The court may consider the following factors, as well as others not specified, in evaluating the application:

(1) The amount or percentage of the affected beneficiary's share that would be the subject of the proposed third-party distribution measured against the reasonable value of any goods or services the person to whom the third-party distribution would be made provided to the beneficiary or to the estate or trust;

(2) Whether the agreement, request, or instructions of the affected beneficiary were procured by duress, fraud, misrepresentation, undue influence, or other unfair means. (R.C. 2109.361(E).)

**Fiduciary's liability for distributions made without prior approval**

Under the bill, if a fiduciary makes a third-party distribution without the prior approval of the probate court, the fiduciary is liable to the affected beneficiary, up to the full amount of the third-party distribution, unless (1) the beneficiary, in writing directly to the fiduciary, waives the fiduciary's liability or consents to the third-party distribution, or (2) the third-party distribution is disclosed on a fiduciary accounting filed with the probate court with notice of the accounting to the beneficiary, and the beneficiary fails to file exceptions to the third-party distribution (R.C. 2109.361(C)(1)).

The bill allows the probate court to reduce or eliminate a fiduciary's liability for an unapproved third-party distribution to the extent that the fiduciary establishes to the satisfaction of the court that the amount and allocation of the distribution was just and equitable under the circumstances. The court must review the agreement that gave rise to the third-party distribution in the same manner as if the fiduciary or an interested party had filed an application for approval prior to the distribution. (R.C. 2109.361(C)(2).)

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	02-23-05	p. 233

H0083-I-126.doc/jc

