

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**HOUSE BILL 732**

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

**INTRODUCED BY**

**R. David Pederson**

**FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE**

**AN ACT**

**RELATING TO PROBATE; CLARIFYING THE RIGHTS OF PARTIES  
PERTAINING TO NONPROBATE TRANSFERS OF MONEY OR PROPERTY;  
AMENDING, REPEALING AND ENACTING SECTIONS OF THE UNIFORM  
PROBATE CODE.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 45-6-101 NMSA 1978 (being Laws 1992,  
Chapter 66, Section 17) is amended to read:**

**"45-6-101. NONPROBATE TRANSFERS ON DEATH. -- [ A- ] A  
provision for a nonprobate transfer on death in an insurance  
policy, contract of employment, bond, mortgage, promissory  
note, certificated or uncertificated security, account  
agreement, custodial agreement, deposit agreement,  
compensation plan, pension plan, individual retirement plan,  
employee benefit plan, trust, conveyance, deed of gift,**

underscored material = new  
[bracketed material] = delete

1 marital property agreement or other written instrument of a  
2 similar nature is nontestamentary. This [~~subsection~~] section  
3 includes a written provision that:

4           [~~(1)~~] A. money or other benefits due to,  
5 controlled by or owned by a decedent before death must be paid  
6 after the decedent's death to a person whom the decedent  
7 designates either in the instrument or in a separate writing,  
8 including a will, executed either before or at the same time  
9 as the instrument, or later;

10           [~~(2)~~] B. money due or to become due under the  
11 instrument ceases to be payable in the event of death of the  
12 promisee or the promisor before payment or demand; or

13           [~~(3)~~] C. any property controlled by or owned by  
14 the decedent before death which is the subject of the  
15 instrument passes to a person the decedent designates either  
16 in the instrument or in a separate writing, including a will,  
17 executed either before or at the same time as the instrument,  
18 or later.

19           [~~B. This section does not limit rights of~~  
20 ~~creditors under other laws of this state.~~]"

21           Section 2. A new Section 45-6-102 NMSA 1978 is enacted  
22 to read:

23           "45-6-102. [NEW MATERIAL] LIABILITY OF NONPROBATE  
24 TRANSFEREES FOR CREDITOR CLAIMS AND STATUTORY ALLOWANCES. --

25           A. As used in this section, "nonprobate transfer"

underscored material = new  
[bracketed material] = delete

1 means a valid transfer effective at death, other than a  
2 transfer of a survivorship interest in a joint tenancy of real  
3 estate, by a transferor whose last domicile was in this state  
4 to the extent that the transferor immediately before death had  
5 power, acting alone, to prevent the transfer by revocation or  
6 withdrawal and instead to use the property for the benefit of  
7 the transferor or apply it to discharge claims against the  
8 transferor's probate estate.

9 B. Except as otherwise provided by statute, a  
10 transferee of a nonprobate transfer is subject to liability to  
11 any probate estate of the decedent for allowed claims against  
12 that estate and statutory allowances to the decedent's spouse  
13 and children to the extent the estate is insufficient to  
14 satisfy those claims and allowances. The liability of a  
15 nonprobate transferee may not exceed the value of nonprobate  
16 transfers received or controlled by that transferee.

17 C. Nonprobate transferees are liable for the  
18 insufficiency described in Subsection B of this section in the  
19 following order of priority:

20 (1) a transferee designated in the decedent's  
21 will or any other governing instrument, as provided in the  
22 instrument;

23 (2) the trustee of a trust serving as the  
24 principal nonprobate instrument in the decedent's estate plan  
25 as shown by its designation as devisee of the decedent's

underscored material = new  
[bracketed material] = delete

1 residuary estate or by other facts or circumstances, to the  
2 extent of the value of the nonprobate transfer received or  
3 controlled; and

4 (3) other nonprobate transferees, in  
5 proportion to the values received.

6 D. Unless otherwise provided by the trust  
7 instrument, interests of beneficiaries in all trusts incurring  
8 liabilities under this section abate as necessary to satisfy  
9 the liability, as if all of the trust instruments were a  
10 single will and the interests were devised under it.

11 E. A provision made in one instrument may direct  
12 the apportionment of the liability among the nonprobate  
13 transferees taking under that or any other governing  
14 instrument. If a provision in one instrument conflicts with a  
15 provision in another, the later one prevails.

16 F. Upon due notice to a nonprobate transferee, the  
17 liability imposed by this section is enforceable in  
18 proceedings in this state, whether or not the transferee is  
19 located in this state.

20 G. A proceeding under this section may not be  
21 commenced unless the personal representative of the decedent's  
22 estate has received a written demand for the proceeding from  
23 the surviving spouse or a child, to the extent that statutory  
24 allowances are affected, or a creditor. If the personal  
25 representative declines or fails to commence a proceeding

underscored material = new  
[bracketed material] = del ete

1 after demand, a person making demand may commence the  
2 proceeding in the name of the decedent's estate, at the  
3 expense of the person making the demand and not of the estate.  
4 A personal representative who declines in good faith to  
5 commence a requested proceeding incurs no personal liability  
6 for declining.

7 H. A proceeding under this section must be  
8 commenced within one year after the decedent's death, but a  
9 proceeding on behalf of a creditor whose claim was allowed  
10 after proceedings challenging disallowance of the claim may be  
11 commenced within sixty days after final allowance of the  
12 claim.

13 I. Unless a written notice asserting that a  
14 decedent's probate estate is nonexistent or insufficient to  
15 pay allowed claims and statutory allowances has been received  
16 from the decedent's personal representative, the following  
17 rules apply:

18 (1) payment or delivery of assets by a  
19 financial institution, registrar or other obligor to a  
20 nonprobate transferee in accordance with the terms of the  
21 governing instrument controlling the transfer releases the  
22 obligor from all claims for amounts paid or assets delivered;  
23 and

24 (2) a trustee receiving or controlling a  
25 nonprobate transfer is released from liability under this

underscored material = new  
[bracketed material] = del ete

1 section with respect to any assets distributed to the trust's  
2 beneficiaries. Each beneficiary to the extent of the  
3 distribution received becomes liable for the amount of the  
4 trustee's liability attributable to assets received by the  
5 beneficiary. "

6 Section 3. Section 45-6-309 NMSA 1978 (being Laws 1992,  
7 Chapter 66, Section 45) is amended to read:

8 "45-6-309. NONTESTAMENTARY TRANSFER ON DEATH. -- [ A-] A  
9 transfer on death resulting from a registration in beneficiary  
10 form is effective by reason of the contract regarding the  
11 registration between the owner and the registering entity and  
12 Sections 45-6-301 through 45-6-311 NMSA 1978 and is not  
13 testamentary.

14 [~~B. Sections 45-6-301 through 45-6-311 NMSA 1978~~  
15 ~~do not limit the rights of creditors of security owners~~  
16 ~~against beneficiaries and other transferees under other laws~~  
17 ~~of this state.~~]"

18 Section 4. REPEAL. -- Section 45-6-215 NMSA 1978 (being  
19 Laws 1992, Chapter 66, Section 28) is repealed.

20 Section 5. EFFECTIVE DATE. -- The effective date of the  
21 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
3  
4  
5

6 February 27, 1999  
7

8 Mr. Speaker:  
9

10 Your JUDICIARY COMMITTEE, to whom has been referred  
11

12 HOUSE BILL 732  
13

14 has had it under consideration and reports same with  
15 recommendation that it DO PASS.  
16

17 Respectfully submitted,  
18

19  
20 \_\_\_\_\_  
21 R. David Pederson, Chairman  
22  
23  
24  
25

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HJC/HB 732

Page 8

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Sanchez

Absent: None

J: \99BillSWP\H0732

underscored material = new  
[bracketed material] = delete