

AMENDED IN SENATE MARCH 27, 2001

SENATE BILL

No. 669

Introduced by Senator Poochigian

February 23, 2001

An act to *amend Section 16249 of*, to add Part 19 (commencing with Section 850) to Division 2 of, to repeal Sections 2619.5, ~~17200.1~~, and 17200.2 of, to repeal Article 6 (commencing with Section 2520) of Chapter 6 of Part 4 of Division 4 of, ~~and~~ to repeal Chapter 11 (commencing with Section 9860) of Part 5 of Division 7 of, *and to repeal and add Section 17200.1 of*, the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL'S DIGEST

SB 669, as amended, Poochigian. Probate: property claims.

Existing law provides for the determination of claims brought to determine ownership of real or personal property claimed by an estate, a ward or conservatee, or a trustee, as specified. Among other provisions, if a court finds that a person has, in bad faith, wrongfully taken, concealed, or disposed of property in the estate of a ward or conservatee, in the estate of a decedent, or in or belonging to the trust, he or she is liable for twice the value of the property. A court may not grant a petition under these provisions if the court determines that the matter should be determined by a civil action.

This bill would revise, recast, and consolidate those provisions. ~~The bill would make the provisions imposing a penalty on persons who wrongfully take, conceal, or dispose of property specifically applicable to persons who embezzle property.~~ The bill would specify that an action brought pursuant to these provisions may include claims, causes of

action, or matters that are normally raised in a civil action to the extent that the matters are related factually to the subject matter of the petition.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 19 (commencing with Section 850) is
2 added to Division 2 of the Probate Code, to read:

3

4 PART 19. CONVEYANCE OR TRANSFER OF PROPERTY
5 CLAIMED TO BELONG TO DECEDENT OR OTHER
6 PERSON
7

8 850. (a) The following persons may file a petition requesting
9 that the court make an order under this part:

10 (1) A guardian, conservator, or any claimant, in the following
11 cases:

12 (A) Where the conservatee is bound by a contract in writing to
13 convey real property or to transfer personal property, executed by
14 the conservatee while competent or executed by the conservatee's
15 predecessor in interest, and the contract is one that can be
16 specifically enforced.

17 (B) Where the ward has succeeded to the interest of a person
18 bound by a contract in writing to convey real property or to transfer
19 personal property, and the contract is one that can be specifically
20 enforced.

21 (C) Where the guardian or conservator or the ward or
22 conservatee is in possession of, or holds title to, real or personal
23 property, and the property or some interest therein is claimed to
24 belong to another.

25 (D) Where the ward or conservatee has a claim to real or
26 personal property title to or possession of which is held by another.

27 (2) The personal representative or any interested person in any
28 of the following cases:

29 (A) Where the decedent while living is bound by a contract in
30 writing to convey real property or to transfer personal property and
31 dies before making the conveyance or transfer and the decedent,
32 if living, could have been compelled to make the conveyance or
33 transfer.



1 (B) Where the decedent while living binds himself or herself or
2 his or her personal representative by a contract in writing to convey
3 real property or to transfer personal property upon or after his or
4 her death and the contract is one which can be specifically
5 enforced.

6 (C) Where the decedent died in possession of, or holding title
7 to, real or personal property, and the property or some interest
8 therein is claimed to belong to another.

9 (D) Where the decedent died having a claim to real or personal
10 property, title to or possession of which is held by another.

11 (3) The trustee or any interested person in any of the following
12 cases:

13 (A) Where the trustee is in possession of, or holds title to, real
14 or personal property, and the property, or some interest, is claimed
15 to belong to another.

16 (B) Where the trustee has a claim to real or personal property,
17 title to or possession of which is held by another.

18 (C) Where the property of the trust is claimed to be subject to
19 a creditor of the settlor of the trust.

20 (b) The petition shall set forth facts upon which the claim is
21 based.

22 851. (a) At least 30 days prior to the day of the hearing, the
23 petitioner shall cause notice of the hearing and a copy of the
24 petition to be served in the manner provided in Chapter 4
25 (commencing with Section 413.10) of Title 5 of Part 2 of the Code
26 of Civil Procedure on all of the following persons where
27 applicable:

28 (1) The personal representative, conservator, guardian, or
29 trustee as appropriate.

30 (2) Each person claiming an interest in, or having title to or
31 possession of, the property.

32 (b) Except for those persons given notice pursuant to
33 subdivision (a), notice of the hearing, together with a copy of the
34 petition, shall be given as provided in Section 1220 if the matter
35 concerns a decedent estate, as provided in Section 1460 if the
36 matter concerns a conservatorship or guardianship, or as provided
37 in Section 17203 if the matter concerns a trust to all of the
38 following persons:



1 (1) Each person listed in Section 1220 along with any heir or
2 devisee whose interest in the property may be affected by the
3 petition if the matter concerns a decedent estate.
4 (2) Each person listed in Section 1460 if the matter concerns a
5 conservatorship or guardianship.
6 (3) Each person listed in Section 17203 if the matter concerns
7 a trust.
8 (c) The court may not shorten the time for giving the notice of
9 hearing under this section.
10 852. An interested person may request time for filing a
11 response to the petition for discovery proceedings, or for other
12 preparation for the hearing, and the court shall grant a continuance
13 for a reasonable time for any of these purposes.
14 853. A person having or claiming title to or an interest in the
15 property which is the subject of the petition may, at or prior to the
16 hearing, object to the hearing of the petition if the petition is filed
17 in a court which is not the proper court under any other provision
18 of law for the trial of a civil action seeking the same relief and, if
19 the objection is established, the court shall not grant the petition.
20 854. If a civil action is pending with respect to the subject
21 matter of a petition filed pursuant to this chapter and jurisdiction
22 has been obtained in the court where the civil action is pending
23 prior to the filing of the petition, upon request of any party to the
24 civil action, the court shall abate the petition until the conclusion
25 of the civil action. This section shall not apply if the court finds that
26 the civil action was filed for the purpose of delay.
27 855. An action brought under this part may include claims,
28 causes of action, or matters that are normally raised in a civil action
29 to the extent that the matters are related factually to the subject
30 matter of a petition filed under this part.
31 856. Except as provided in Sections 853 and 854, if the court
32 is satisfied that a conveyance, transfer, or other order should be
33 made *to protect the interests of the estate or a beneficiary thereof*,
34 the court shall make an order authorizing and directing the
35 personal representative or other fiduciary, or the person having
36 title to or possession of the property, to execute a conveyance or
37 transfer to the person entitled thereto, or granting other appropriate
38 relief.
39 857. (a) The order is prima facie evidence of the correctness
40 of the proceedings and of the authority of the personal



1 representative or other fiduciary or other person to make the
2 conveyance or transfer.

3 (b) After entry of an order that the personal representative,
4 other fiduciary, or other person execute a conveyance or transfer,
5 the person entitled thereunder has the right to the possession of the
6 property, and the right to hold the property, according to the terms
7 of the order as if the property had been conveyed or transferred in
8 accordance with the terms of the order.

9 858. If a proceeding has been brought under this part by a
10 conservator on behalf of a conservatee, *or by a guardian on behalf*
11 *of a ward*, and the conservatee *or ward* dies during the pendency
12 of the proceeding, the personal representative of the ~~conservatee's~~
13 *conservatee or ward's* estate or other successor in interest may
14 proceed with the matter and the existing proceeding shall not be
15 dismissed on account of the death of the conservatee *or ward*.

16 859. If a court finds that a person has in bad faith wrongfully
17 taken, ~~embezzled~~, concealed, or disposed of property belonging to
18 the estate of a decedent, conservatee, ~~trust, or guardianship~~ *ward,*
19 *or trust*, the person shall be liable for twice the value of the
20 property recovered by an action under this part. *The remedy*
21 *provided in this section shall be in addition to any other remedies*
22 *available in law to a trustee, guardian or conservator, or personal*
23 *representative or other successor in interest of a decedent.*

24 SEC. 2. Article 6 (commencing with Section 2520) of
25 Chapter 6 of Part 4 of Division 4 of the Probate Code is repealed.

26 SEC. 3. Section 2619.5 of the Probate Code is repealed.

27 SEC. 4. Chapter 11 (commencing with Section 9860) of Part
28 5 of Division 7 of the Probate Code is repealed.

29 SEC. 5. Section 16249 of the Probate Code is amended to
30 read:

31 16249. The trustee has the power to prosecute or defend
32 actions, claims, or proceedings for the protection of trust property
33 and of the trustee in the performance of the trustee's duties.

34 SEC. 6. Section 17200.1 of the Probate Code is repealed.

35 SEC. 7. *Section 17200.1 is added to the Probate Code, to*
36 *read:*

37 *17200.1. All proceedings concerning the transfer of property*
38 *of the trust shall be conducted pursuant to the provisions of Part*
39 *19 (commencing with Section 850) of Division 2.*



1 *SEC. 8.* Section 17200.2 of the Probate Code is repealed.

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