

1 HB145
2 164589-1
3 By Representatives Beckman and Givan
4 RFD: Judiciary
5 First Read: 05-MAR-15

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, a person who is divorced
9 from a decedent is not considered a surviving
10 spouse for purposes of inheritance through a will;
11 however, the law is silent as to the passage of
12 assets through other devices or payable on death
13 instruments.

14 This bill would provide for inheritance of
15 certain documents such as revocable inter-vivos
16 trusts, life-insurance and retirement-plan
17 beneficiary designations, transfer-on-death
18 accounts, and other revocable dispositions to the
19 former spouse that the divorced individual
20 established before the divorce or annulment.

21 This bill would also provide that the
22 interests of the former spouses in property that
23 they held at the time of the divorce or annulment
24 as joint tenants with the right of survivorship are
25 severed and their co-ownership interests become
26 tenancies in common.

1 A BILL
2 TO BE ENTITLED
3 AN ACT
4

5 To provide for revocation of certain transferable
6 interests in property in the event of divorce or annulment;
7 and to provide that where former spouses held property as
8 joint tenants at the time of divorce or annulment, the
9 property interest becomes a tenancy in common upon divorce or
10 annulment.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. (a) In this section, the following terms
13 have the following meanings:

14 (1) DISPOSITION OR APPOINTMENT OF PROPERTY. Includes
15 a transfer of an item of property or any other benefit to a
16 beneficiary designated in a governing instrument.

17 (2) DIVORCE or ANNULMENT. Any divorce or annulment,
18 or any dissolution or declaration of invalidity of a marriage,
19 that would exclude the spouse as a surviving spouse within the
20 meaning of Section 43-8-252 of the Code of Alabama 1975. A
21 decree of separation that does not terminate the status of
22 husband and wife is not a divorce for purposes of this
23 section.

24 (3) DIVORCED INDIVIDUAL. An individual whose
25 marriage has been terminated by divorce or annulment.

1 (4) GOVERNING INSTRUMENT. An instrument executed by
2 the divorced individual before the divorce or annulment of his
3 or her marriage to his or her former spouse.

4 (5) RELATIVE OF THE DIVORCED INDIVIDUAL'S FORMER
5 SPOUSE. An individual who is related to the divorced
6 individual's former spouse by blood, adoption, or affinity
7 during the marriage and after the divorce or annulment, who is
8 no longer related to the divorced individual by blood,
9 adoption, or affinity.

10 (6) REVOCABLE. With respect to a disposition,
11 appointment, provision, or nomination, one under which the
12 divorced individual, at the time of the divorce or annulment,
13 was alone empowered, by law or under the governing instrument,
14 to cancel the designation in favor of his or her former spouse
15 or former spouse's relative, whether or not the divorced
16 individual was then empowered to designate himself or herself
17 in place of his or her former spouse or in place of his or her
18 former spouse's relative and whether or not the divorced
19 individual then had the capacity to exercise the power.

20 (b) Except as provided by the express terms of a
21 governing instrument, a court order, or a contract relating to
22 the division of the martial estate made between the divorced
23 individuals before or after the marriage, divorce, or
24 annulment, the divorce or annulment of a marriage:

25 (1) revokes any revocable:

26 a. disposition or appointment of property made by a
27 divorced individual to his or her former spouse in a governing

1 instrument and any disposition or appointment created by law
2 or in a governing instrument to a relative of the divorced
3 individual's former spouse;

4 b. provision in a governing instrument conferring a
5 general or nongeneral power of appointment on the divorced
6 individual's former spouse or on a relative of the divorced
7 individual's former spouse; and

8 c. nomination in a governing instrument, nominating
9 a divorced individual's former spouse or a relative of the
10 divorced individual's former spouse to serve in any fiduciary
11 or representative capacity, including a personal
12 representative, executor, trustee, conservator, agent, or
13 guardian; and

14 (2) severs the interests of the former spouses in
15 property held by them at the time of the divorce or annulment
16 as joint tenants with the right of survivorship transforming
17 the interests of the former spouses into equal tenancies in
18 common.

19 (c) A severance under subdivision (2) of subsection
20 (b) does not affect any third-party interest in property
21 acquired for value and in good faith reliance on an apparent
22 title by survivorship in the survivor of the former spouses
23 unless a writing declaring the severance has been noted,
24 registered, filed, or recorded in records appropriate to the
25 kind and location of the property which are relied upon, in
26 the ordinary course of transactions involving such property,
27 as evidence of ownership.

1 (d) Provisions of a governing instrument are given
2 effect as if the former spouse and relatives of the former
3 spouse disclaimed all provisions revoked by this section or,
4 in the case of a revoked nomination in a fiduciary or
5 representative capacity, as if the former spouse and relatives
6 of the former spouse died immediately before the divorce or
7 annulment.

8 (e) Provisions revoked solely by this section are
9 revived by the divorced individual's remarriage to the former
10 spouse or by a nullification of the divorce or annulment.

11 (f) A payor or other third party is not liable for
12 having made a payment or transferred an item of property or
13 any other benefit to a beneficiary designated in a governing
14 instrument affected by a divorce, annulment, or remarriage, or
15 for having taken any other action in good faith reliance on
16 the validity of the governing instrument, before the payor or
17 other third party received written notice of the divorce,
18 annulment, or remarriage. A payor or other third party is
19 liable for a payment made or other action taken after the
20 payor or other third party received written notice of a
21 claimed forfeiture under this section.

22 (g) (1) A person who purchases property from a former
23 spouse, relative of a former spouse, or any other person for
24 value and without notice, or who receives from a former
25 spouse, relative of a former spouse, or any other person a
26 payment or other item of property in partial or full
27 satisfaction of a legally enforceable obligation, is neither

1 obligated under this section to return the payment, item of
2 property, or benefit nor is liable under this section for the
3 amount of the payment or the value of the item of property or
4 benefit.

5 (2) A former spouse, relative of a former spouse, or
6 other person who receives a payment, an item of property, or
7 any other benefit to which that person is not entitled under
8 this section is obligated to return the payment, item of
9 property, or benefit, or is personally liable for the amount
10 of the payment or the value of the item of property or
11 benefit, to the person who is entitled to the payment,
12 benefit, or property under this section.

13 (3) If this section or any part of this section is
14 preempted by federal law with respect to a payment, an item of
15 property, or any other benefit covered by this section, a
16 former spouse, relative of the former spouse, or any other
17 person who receives a payment, an item of property, or any
18 other benefit to which that person is not entitled under this
19 section is obligated to return that payment, item of property,
20 or benefit, or is personally liable for the amount of the
21 payment of the value of the item of property or benefit, to
22 the person who would have been entitled to it were this
23 section or part of this section not preempted.

24 Section 2. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.