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4

As Engrossed: H3/15/23

A Bill

HOUSE BILL 1409

5 By: Representative M. Brown
6 By: Senator C. Tucker
7

For An Act To Be Entitled

9 AN ACT TO ADOPT THE UNIFORM COMMUNITY PROPERTY
10 DISPOSITION AT DEATH ACT; TO REPEAL THE CURRENT LAW
11 CONCERNING THE DISPOSITION OF COMMUNITY PROPERTY AT
12 DEATH; AND FOR OTHER PURPOSES.
13
14

Subtitle

15 TO ADOPT THE UNIFORM COMMUNITY PROPERTY
16 DISPOSITION AT DEATH ACT.
17
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 28 is amended to add an additional
23 chapter to read as follows:

24 28-15-101. Title.

25 This chapter may be cited as the Uniform Community Property Disposition
26 at Death Act.
27

28 28-15-102. Definitions.

29 In this chapter:

30 (1) "Community-property spouse" means an individual in a marriage or
31 other relationship:

32 (A) under which community property could be acquired during the
33 existence of the relationship; and

34 (B) that remains in existence at the time of death of either
35 party to the relationship.

36 (2) "Electronic" means relating to technology having electrical,



1 digital, magnetic, wireless, optical, electromagnetic, or similar
2 capabilities.

3 (3) "Jurisdiction" means the United States, a state, a foreign county,
4 or a political subdivision of a foreign country.

5 (4) "Partition" means voluntarily divide property to which this chapter
6 otherwise would apply.

7 (5) "Person" means an individual, estate, business or nonprofit entity,
8 public corporation, government or governmental subdivision, agency, or
9 instrumentality, or other legal entity.

10 (6) "Personal representative" includes an executor, administrator,
11 successor personal representative, special administrator, and other person
12 that performs substantially the same function.

13 (7) "Property" means anything that may be the subject of ownership,
14 whether real or personal, tangible or intangible, legal or equitable, or any
15 interest therein.

16 (8) "Reclassify" means change the characterization or treatment of
17 community property to property owned separately by community-property
18 spouses.

19 (9) "Record" means information:

20 (A) inscribed on a tangible medium; or

21 (B) stored in an electronic or other medium and retrievable in
22 perceivable form.

23 (10) "Sign" means, with present intent to authenticate or adopt a
24 record:

25 (A) execute or adopt a tangible symbol; or

26 (B) attach to or logically associate with the record an
27 electronic symbol, sound, or process.

28 (11) "State" means a state of the United States, the District of
29 Columbia, Puerto Rico, the United States Virgin Islands, or any other
30 territory or possession subject to the jurisdiction of the United States. The
31 term includes a federally recognized Indian tribe.

32
33 28-15-103. Included and excluded property.

34 (a) Subject to subsection (b), this chapter applies to the following
35 property of a community-property spouse, without regard to how the property
36 is titled or held:

1 (1) if a decedent was domiciled in this state at the time of
2 death:

3 (A) all or a proportionate part of each item of personal
4 property, wherever located, that was community property under the law of the
5 jurisdiction where the decedent or the surviving community-property spouse
6 was domiciled when the property:

7 (i) was acquired; or

8 (ii) after acquisition, became community property;

9 (B) income, rent, profit, appreciation, or other increase
10 derived from or traceable to property described in subparagraph (A); and

11 (C) personal property traceable to property described in
12 subparagraph (A) or (B); and

13 (2) regardless whether a decedent was domiciled in this state at
14 the time of death:

15 (A) all or a proportionate part of each item of real
16 property located in this state traceable to community property or acquired
17 with community property under the law of the jurisdiction where the decedent
18 or the surviving community-property spouse was domiciled when the property:

19 (i) was acquired; or

20 (ii) after acquisition, became community property;

21 and

22 (B) income, rent, profit, appreciation, or other increase,
23 derived from or traceable to property described in subparagraph (A).

24 (b) If community-property spouses acquired community property by
25 complying with the law of a jurisdiction that allows for creation of
26 community property by transfer of property to a trust, this chapter applies
27 to the property only to the extent the property is held in the trust or
28 characterized as community property by the terms of the trust or the law of
29 the jurisdiction under which the trust was created.

30 (c) This chapter does not apply to property that:

31 (1) community-property spouses have partitioned or reclassified;

32 or

33 (2) is the subject of a waiver of rights granted by this chapter.

34
35 28-15-104. Form of partition, reclassification, or waiver.

36 (a) Community-property spouses domiciled in this state may partition or

1 reclassify property to which this chapter otherwise would apply. The
2 partition or reclassification must be in a record signed by both community-
3 property spouses.

4 (b) A community-property spouse domiciled in this state may waive a
5 right granted by this chapter only by complying with the law of this state,
6 including this state's choice-of-law rules, applicable to waiver of a spousal
7 property right.

8
9 28-15-105. Community property presumption.

10 All property acquired by a community-property spouse when domiciled in
11 a jurisdiction where community property then could be acquired by the
12 community-property spouse by operation of law is presumed to be community
13 property. This presumption may be rebutted by a preponderance of the
14 evidence.

15
16 28-15-106. Disposition of property at death.

17 (a) One-half of the property to which this chapter applies belongs to
18 the surviving community-property spouse of a decedent and is not subject to
19 disposition by the decedent at death.

20 (b) One-half of the property to which this chapter applies belongs to
21 the decedent and is subject to disposition by the decedent at death.

22 (c) The property that belongs to the decedent under subsection (b) is
23 not subject to the elective-share right of the surviving community-property
24 spouse.

25 (d) Except for the purpose of calculating the augmented estate of the
26 decedent and the elective-share right of the surviving community-property
27 spouse, this section does not apply to property transferred by right of
28 survivorship or under a revocable trust or other nonprobate transfer.

29 (e) This section does not limit the right of a surviving community-
30 property spouse to allowances under § 28-39-101 et seq., § 28-39-201 et seq.,
31 § 28-39-301 et seq., and § 28-39-401 et seq.

32 (f) If at death a decedent purports to transfer to a third person
33 property that, under this section, belongs to the surviving community-
34 property spouse and transfers other property to the surviving community-
35 property spouse, this section does not limit the authority of the court under
36 other law of this state to require that the community-property spouse elect

1 between retaining the property transferred to the community-property spouse
2 or asserting rights under this chapter.

3
4 28-15-107. Other remedies available at death.

5 (a) At the death of a community-property spouse, the surviving
6 community-property spouse or a personal representative, heir, or nonprobate
7 transferee of the decedent may assert a right based on an act of:

8 (1) the surviving community-property spouse or decedent during
9 the marriage or other relationship under which community property then could
10 be acquired; or

11 (2) the decedent that takes effect at the death of the decedent.

12 (b) In determining a right under subsection (a) and corresponding
13 remedy, the court:

14 (1) shall apply equitable principles; and

15 (2) may consider the community property law of the jurisdiction
16 where the decedent or surviving community-property spouse was domiciled when
17 property was acquired or enhanced.

18
19 28-15-108. Right of surviving community-property spouse.

20 (a) The surviving community-property spouse of the decedent may assert
21 a claim for relief with respect to a right under this chapter in accordance
22 with the following rules:

23 (1) In an action asserting a right in or to property, the
24 surviving community-property spouse must:

25 (A) not later than three years after the death of the
26 decedent, commence an action against an heir, devisee, or nonprobate
27 transferee of the decedent that is in possession of the property; or

28 (B) not later than six months after appointment of the
29 personal representative of the decedent, send a demand in a record to the
30 personal representative.

31 (2) In an action other than an action under paragraph (1), the
32 surviving community-property spouse must:

33 (A) not later than six months after appointment of the
34 personal representative of the decedent, send a demand in a record to the
35 personal representative; or

36 (B) if a personal representative is not appointed, commence

1 the action not later than three years after the death of the decedent.

2 (b) Unless a timely demand is made under subsection (a)(1)(B) or
3 (2)(A), the personal representative may distribute the assets of the
4 decedent's estate without personal liability for a community-property
5 spouse's claim under this chapter.

6
7 28-15-109. Right of heir, devisee, or nonprobate transferee.

8 An heir, devisee, or nonprobate transferee of a deceased community-
9 property spouse may assert a claim for relief with respect to a right under
10 this chapter in accordance with the following rules:

11 (1) In an action asserting a right in or to property, the heir,
12 devisee, or nonprobate transferee must:

13 (A) not later than three years after the death of the
14 decedent, commence an action against the surviving community-property spouse
15 of the decedent who is in possession of the property; or

16 (B) not later than six months after appointment of the
17 personal representative of the decedent, send a demand in a record to the
18 personal representative.

19 (2) In an action other than an action under paragraph (1), the
20 heir, devisee, or nonprobate transferee must:

21 (A) not later than six months after the appointment of the
22 personal representative of the decedent, send a demand in a record to the
23 personal representative; or

24 (B) if a personal representative is not appointed, commence
25 the action not later than three years after the death of the decedent.

26
27 28-15-110. Protection of third person.

28 (a) With respect to property to which this chapter applies, a person is
29 not liable under this chapter to the extent the person:

30 (1) transacts in good faith and for value:

31 (A) with community-property spouse; or

32 (B) after the death of the decedent, with a surviving
33 community-property spouse, personal representative, heir, devisee, or
34 nonprobate transferee of the decedent; and

35 (2) does not know or have reason to know that the other party to
36 the transaction is exceeding or improperly exercising the party's authority.

1 (b) Good faith under subsection (a)(1) does not require the person to
2 inquire into the extent or propriety of the exercise of authority by the
3 other party to the transaction.

4
5 28-15-111. Principles of law and equity.

6 The principles of law and equity supplement this chapter except to the
7 extent inconsistent with this chapter.

8
9 28-15-112. Uniformity of application and construction.

10 In applying and construing this chapter, a court shall consider the
11 promotion of uniformity of the law among jurisdictions that enact it.

12
13 28-15-113. Saving provision.

14 If a right with respect to property to which this chapter applies is
15 acquired, extinguished, or barred on the expiration of a limitation period
16 that began to run under another statute before the effective date of this
17 chapter, that statute continues to apply to the right even if the statute has
18 been repealed or superseded by this chapter.

19
20 28-15-114. Transitional provision.

21 Except as provided in § 28-15-113, this chapter applies to a judicial
22 proceeding with respect to property to which this chapter applies commenced
23 on or after the effective date of this chapter, regardless of the date of
24 death of the decedent.

25
26 SECTION 2. Arkansas Code Title 28, Chapter 12, is repealed.

27 ~~28-12-101. Application.~~

28 ~~This chapter applies to the disposition at death of the following property~~
29 ~~acquired by a married person:~~

30 ~~(1) All personal property, wherever situated:~~

31 ~~(i) Which was acquired as or became, and remained, community~~
32 ~~property under the laws of another jurisdiction; or~~

33 ~~(ii) All or the proportionate part of that property acquired~~
34 ~~with the rents, issues, or income of, or the proceeds from, or in exchange~~
35 ~~for, that community property; or~~

36 ~~(iii) Traceable to that community property;~~

1 ~~(2) All or the proportionate part of any real property situated in~~
2 ~~this state which was acquired with the rents, issues, or income of, the~~
3 ~~proceeds from, or in exchange for, property acquired as or which became, and~~
4 ~~remained, community property under the laws of another jurisdiction, or~~
5 ~~property traceable to that community property.~~

6
7 ~~28-12-102. Rebuttable presumptions.~~

8 ~~In determining whether this chapter applies to specific property, the~~
9 ~~following rebuttable presumptions apply:~~

10 ~~(1) Property acquired during marriage by a spouse of that marriage~~
11 ~~while domiciled in a jurisdiction under whose laws property could then be~~
12 ~~acquired as community property is presumed to have been acquired as or to~~
13 ~~have become, and remained, property to which this chapter applies; and~~

14 ~~(2) Real property situated in this state and personal property~~
15 ~~wherever situated acquired by a married person while domiciled in a~~
16 ~~jurisdiction under whose laws property could not then be acquired as~~
17 ~~community property, title to which was taken in a form which created rights~~
18 ~~of survivorship, is presumed not to be property to which this chapter~~
19 ~~applies.~~

20
21 ~~28-12-103. Disposition upon death.~~

22 ~~Upon the death of a married person, one half ($\frac{1}{2}$) of the property to which~~
23 ~~this chapter applies is the property of the surviving spouse and is not~~
24 ~~subject to testamentary disposition by the decedent or distribution under the~~
25 ~~laws of succession of this state. One half ($\frac{1}{2}$) of that property is the~~
26 ~~property of the decedent and is subject to testamentary disposition or~~
27 ~~distribution under the laws of succession of this state. With respect to~~
28 ~~property to which this chapter applies, the one half ($\frac{1}{2}$) of the property~~
29 ~~which is the property of the decedent is not subject to the surviving~~
30 ~~spouse's right to elect against the will and no estate of dower or curtesy~~
31 ~~exists in the property of the decedent.~~

32
33 ~~28-12-104. Perfection of title of surviving spouse.~~

34 ~~If the title to any property to which this chapter applies was held by the~~
35 ~~decedent at the time of death, title of the surviving spouse may be perfected~~
36 ~~by an order of the court or by execution of an instrument by the personal~~

1 ~~representative or the heirs or devisees of the decedent with the approval of~~
2 ~~the court. Neither the personal representative nor the court in which the~~
3 ~~decedent's estate is being administered has a duty to discover or attempt to~~
4 ~~discover whether property held by the decedent is property to which this~~
5 ~~chapter applies, unless a written demand is made by the surviving spouse or~~
6 ~~the spouse's successor in interest.~~

7
8 ~~28-12-105. Perfection of title of personal representative, heir, or~~
9 ~~devisee.~~

10 ~~If the title to any property to which this chapter applies is held by the~~
11 ~~surviving spouse at the time of the decedent's death, the personal~~
12 ~~representative or an heir or devisee of the decedent may institute an action~~
13 ~~to perfect title to the property. The personal representative has no~~
14 ~~fiduciary duty to discover or attempt to discover whether any property held~~
15 ~~by the surviving spouse is property to which this chapter applies, unless a~~
16 ~~written demand is made by an heir, devisee, or creditor of the decedent.~~

17
18 ~~28-12-106. Purchaser for value or lender.~~

19 ~~(a) If a surviving spouse has apparent title to property to which this~~
20 ~~chapter applies, a purchaser for value or a lender taking a security interest~~
21 ~~in the property takes his interest in the property free of any rights of the~~
22 ~~personal representative or an heir or devisee of the decedent.~~

23 ~~(b) If a personal representative or an heir or devisee of the decedent has~~
24 ~~apparent title to property to which this chapter applies, a purchaser for~~
25 ~~value or a lender taking a security interest in the property takes his~~
26 ~~interest in the property free of any rights of the surviving spouse.~~

27 ~~(c) A purchaser for value or a lender need not inquire whether a vendor or~~
28 ~~borrower acted properly.~~

29 ~~(d) The proceeds of a sale or creation of a security interest shall be~~
30 ~~treated in the same manner as the property transferred to the purchaser for~~
31 ~~value or a lender.~~

32
33 ~~28-12-107. Creditor's rights.~~

34 ~~This chapter does not affect rights of creditors with respect to property to~~
35 ~~which this chapter applies.~~

36

1 ~~28-12-108.—Acts of married persons.~~

2 ~~This chapter does not prevent married persons from severing or altering their~~
3 ~~interests in property to which this chapter applies.~~

4
5 ~~28-12-109.—Limitations on testamentary disposition.~~

6 ~~This chapter does not authorize a person to dispose of property by will if it~~
7 ~~is held under limitations imposed by law preventing testamentary disposition~~
8 ~~by that person.~~

9
10 ~~28-12-110.—Uniformity of application and construction.~~

11 ~~This chapter shall be so applied and construed as to effectuate its general~~
12 ~~purpose to make uniform the law with respect to the subject of this chapter~~
13 ~~among those states which enact it.~~

14
15 ~~28-12-111.—Short title.~~

16 ~~This chapter may be cited as the “Uniform Disposition of Community Property~~
17 ~~Rights at Death Act.”~~

18
19 ~~28-12-112.—Effective date.~~

20 ~~This chapter shall become effective on October 1, 1981.~~

21
22 ~~28-12-113.—Repealer.~~

23 ~~All laws and parts of laws in conflict with this chapter are repealed.~~

24
25 */s/M. Brown*

26
27
28 **APPROVED: 4/11/23**