Bill as Introduced

HB 183 – VERSION ADOPTED BY BOTH BODIES

30jan03... 0049h

2003 SESSION

03-0668
01/09

HOUSE BILL ***183***

AN ACT relative to a distribution from a decedent's estate to a minor.

SPONSORS: Rep. J. Pratt, Ches 24; Rep. Craig, Hills 50; Rep. Rowe, Hills 47; Sen. Foster, Dist 13; Sen. Peterson, Dist 11

COMMITTEE: Judiciary

ANALYSIS

This law clarifies the procedure relative to a distribution from a decedent's estate to a minor.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 183 – VERSION ADOPTED BY BOTH BODIES

30jan03... 0049h

03-0668
01/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to a distribution from a decedent's estate to a minor.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Minors Not Under Guardianship. Amend RSA 561:20 to read as follows:

561:20 Minors Not Under Guardianship. Whenever any minor ***whose estate is*** not [~~being~~] under legal guardianship shall be entitled to receive from any administrator [~~or~~], executor***, trustee, or third party payor/custodian,*** any distributive share as heir or next of kin, [~~or~~] any legacy, [~~the full amount of which share or legacy is not more than $5,000, said administrator or executor, upon petition to and approval of the probate court, shall pay said sum to the parents of the minor, if both are living, or to the surviving parent if one parent is deceased, or to the parent or other person having custody of the minor, if the parents are divorced, or to a person standing in loco parentis to the minor, if both parents are deceased. The receipt of the parents or parent or other person shall be filed and accepted by the probate court in discharge of the administrator's or executor's liability therefor in the same manner and effect as though the parents or parent or other person had been legally appointed guardian by the probate court. Publication of notice upon the petition to the probate court shall not be required unless ordered by the court. When considering such a petition the probate court shall determine the best interests of the minor. If such a petition is approved by the probate court, the court may make all necessary orders for protecting the interests of the minor and may require the parents or parent or other person to give bond or to account for all money received on behalf of the minor, or both~~] ***bequest or devise, any monetary distribution, or any ownership interest, said administrator, executor, trustee, or third party payor/custodian shall make such distribution to the person designated as such minor's custodian for the benefit of such minor under either RSA 463-A, the Uniform Transfers to Minors Act, or under another state's Uniform Transfers to Minors Act or similar statute, or absent a designated custodian, to a custodian for the benefit of such minor under RSA 463-A, the Uniform Transfers to Minors Act.***

2 Effective Date. This act shall take effect January 1, 2004.

Committee Minutes

Date: April 8, 2003
Time: 1:15 p.m.
Room: SH 103

The Senate Committee on Banks held a hearing on the following:

HB 183 relative to a distribution from a decedent's estate to a minor.

Members of Committee present: Senator Flanders
Senator Peterson
Senator Barnes
Senator Odell

The Chair, Senator Robert B. Flanders, opened the hearing.

I would like to open up the hearing on House Bill 183. I call on Senator Peterson, co-sponsor of the bill.

Senator Andrew R. Peterson, D. 11: Thank you Mr. Chairman. I co-sponsored this bill which was part of a three or four grouping of bills which were introduced into the house by Representative Pratt at the request of the probate court and Judge Mahar to make adjustments in our laws regarding estates court systems deem to be appropriate. So I'm sure that those behind me will explain why this is the case. Thank you.

Senator Robert B. Flanders, D. 7: Thank you. Any questions of the witness?

Ann Meissner Flood, Attorney, Orr and Reno: My name is Ann Flood and I'm an attorney at Orr and Reno and I'm also a member of Judge Mahar's adhoc privy committee.

Senator Robert B. Flanders, D. 7: Before you testify, in insurance this morning we had HB 182, that's all part of this same group isn't it?

Attorney Flood: It's all part of it. There are three more bills and I don't know where those stand in the system.

Senator Robert B. Flanders, D. 7: You testified on that one this morning?

Attorney Flood: Yes. It's all part of the same package.

Senator Robert B. Flanders, D. 7: I don't know how the one got to insurance.

Attorney Flood: I'm not sure either to be honest.

Senator Robert B. Flanders, D. 7: Thank you for coming.

Attorney Flood: What we were attempting to do by amending 561:20 was to make it uniform with a provision in the uniform transfers to minors act which is RSA 463:A-6. Basically we discovered that we had two statutes that conflicted with one another. The probate courts dealt with the conflict differently depending on which county you were in. Our goal was to make the two provisions uniform. What we have elected to do, the change that we are making, it's that if a minor is not under a legal guardianship, 561:20 as we're proposing to amend it would allow that minor's custodian if there is a custodian designated for that minor under the uniform transfers to minors act, to receive that minors distribution. That's consistent with 463:A-6. Before there was a limitation as the statute currently existed, it said that if the amount was more than $5,000 you needed to go in and seek the courts permission.

What we're saying, what the new provision is saying is that if the document, the underlying document authorizes a distribution to be made to a custodian under the uniform transfers to minors act for the benefit of the minor, then an executor or trustee or whoever has possession of the money can make the distribution to the minor without going into the probate court and getting a guardianship for that minor. So that if, as I said, a decedent or a testator or a grantor of a trust says that you can utilize a uniform transfer to minors act then a transfer can happen pursuant to 463:A.

Senator Robert B. Flanders, D. 7: Any questions of the witness? Senator Barnes.

Senator John S. Barnes, Jr., and D. 17: Can you give us an example of why this is necessary?

Attorney Flood: Why it's necessary? Frequently people will leave a small amount, it doesn't even matter the amount, an amount of money to a minor child. Under New Hampshire statute as it currently exists in order for that minor to get that bequest there would have to be a formal guardianship over

the minor's estate through the probate court. The parent is only the guardian of the child's person and not the minor's property. So if you have a bequest to a minor and there is no authority to make a distribution under the uniform transfers to minors act then that money needs to go into a formal guardianship for the benefit of the minor.

Senator Robert B. Flanders, D. 7: Follow-up?

Senator John S. Barnes, Jr., D. 17: We just had a terrible plane crash. People out in Keene lost 3 of their children and the wife and husband were killed. That might not be a small inheritance for those two children that survived. I think one is five and one is seven. How would that effect that, say they were left $1,000,000?

Attorney Flood: If the parents will had a provision in it in which the parent designated a custodian for that minor child then the money could be paid to the custodian for the minor child and would be held under 463, the provisions of 463:A for the benefit of the minor child. If there was no specific designation in the parent's will for a custodian then the monies would be held in a guardianship proceeding through the probate court?

Senator John S. Barnes, Jr., D. 17: How long would it be held?

Attorney Flood: Until the minor reaches the age of 18,

Senator John S. Barnes, Jr., D. 17: Who holds that money?

Attorney Flood: In which instance sir. In a guardianship proceeding the guardian would hold the money for the benefit of the minor and would account to the court. It would be invested and collect interest and the guardian is required to post a bond and account to the probate court for the monies.

Senator John S. Barnes, Jr., D. 17: On a yearly basis type thing?

Attorney Flood: On a yearly basis. It's a corporate bond with sureties.

Senator Robert B. Flanders, D. 7: How about a trustee? Do they have to account to the courts?

Attorney Flood: If it's a testamentary trust, a trust under a will, they would. If it's an intervivous trust that didn't have any language then you would go, before the trustee could pay the money out to the minor there would have to be a guardianship proceeding. If it was an outright distribution from a trust.

But an intervivous trust could be created for a number of years for the benefit of a minor.

Senator Bob Odell, D. 8: This law, this change doesn't apply to these situations. This is only a minor without a guardian, right?

Attorney Flood: This is a minor without a guardian so it's without a guardian. If there is already a preexisting guardianship in place then you would use. This would be for a minor whose estate is not under a legal guardianship.

Senator Bob Odell, D. 8: So these other examples don't..

Attorney Flood: No, it just clarifies a conflict between the two provisions quite honestly.

Senator Robert B. Flanders, D. 7: any other questions?

Senator Andrew R. Peterson, D. 11: Just one. So in other words all this that's been crossed out here this language having to do with distributions not more than $5,000, the court considering the best interest of the child etc. are covered in one way or another under the Uniform Transfers to Minors Act and so forth. So there's a conflict between this section and that section and they need to know which that they want us to run it. Is that essentially it?

Attorney Flood: Yes. The amount, the conflict arose when you had the first distribution. 561:20 mentions $5,000 and then 463:A-6 mentions the sum of $10,000. Under 463:A-6, which is the Uniform Transfers to Minors Act, an executor or a trustee can make a distribution pursuant to 463:A-6 if the trustee deems it to be in the minor's best interest. Then if the amount is more than $10,000 they would have to go to the probate court and get the probate courts blessing before they could make a distribution to a custodian under 463:A-6.

Senator Andrew R. Peterson, D. 11: Thank you.

Senator Robert B. Flanders, D. 7: Any other questions? If not, thank you for your testimony. Do you wish to testify sir?

Representative Rowe: No. I just came because I thought no one would be here from the house judiciary.

Senator Robert B. Flanders, D. 7: Who was on the study committee?

Representative Rowe: Jack Pratt, myself, probably Craig.

Attorney Flood: It was approved. Judge Mahar sat with us. I've spoken with Judge Hampey about this bill yesterday afternoon and he's.

Senator Robert B. Flanders, D. 7: Has he seen this bill?

Attorney Flood: He has. Actually all the probate court judges have seen all of the bills that we're proposing so we took into account their comments. We've talked to them separately about their concerns. Members of the Estate Planning Bar have all seen it. It has been distributed out to a lot of people for comments.

Representative Rowe: I shudder to call it a housekeeping bill because it brings shivers up and down people's minds but it is. It makes it simpler and more direct.

Attorney Flood: Thank you.

Senator Robert B. Flanders, D. 7: Thank you for your testimony. Is there anyone else who wishes to testify on House Bill 183, if not I'm going to close the hearing?

Hearing closed at 1:25 p.m.

Respectfully submitted

Pamela Manocchi

Pamela Manocchi
April 9, 2003

Speakers

SENATE BANKS

Date April 8, 2003, 2003 Time 1:15 Public Hearing on **Bill # HB 183 relative to a distribution from a decedent's estate to a minor.**

(Please print) ***Please check box(es) at left that apply.***

SPEAKING?	FAVOR	OPPOSED	NAME	REPRESENTING
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Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: April 8, 2003

THE COMMITTEE ON Banks

to which was referred House Bill 183

AN ACT relative to a distribution from a decedent's estate to a minor.

VOTE: 4-0

Having considered the same, report the same without amendment and recommend that the bill: **OUGHT TO PASS.**

Senator Andrew R. Peterson
For the Committee

HB183 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: relative to a distribution from a decedent's estate to a minor.

Date	Body	Description
1/9/2003	**H**	Introduced and ref to Judiciary; HJ8, p109
1/9/2003	**H**	Copy to Chairman on 1/9/2003
1/9/2003	**H**	Hearing Jan 23 10:00 RM208,LOB
1/23/2003	**H**	Maj Report OTP/AM for Jan 30 (Vote 16-0;CC)
1/23/2003	**H**	Prop Comm Am{0049}; HC10, p156-157
1/30/2003	**H**	Passed with Am; HJ 12, p218 + 231
3/13/2003	**S**	Introduced and Ref. to Banks; SJ 8, Pg.108
4/4/2003	**S**	Hearing; April 8, 2003, Room 103, SH, 1:15 p.m.; SC17
4/11/2003	**S**	Committee Report; Ought to Pass [04/17/03]; SC18
4/17/2003	**S**	Ought to Pass; MA, VV; OT3rdg; SJ 13, Pg.319
4/17/2003	**S**	Passed by 3rd Reading Resolution; SJ 13, Pg.327
4/17/2003	**H**	Enrolled; HJ40, p1273
4/24/2003	**S**	Enrolled; SJ 14, Pg.348
5/2/2003	**H**	Signed by the Governor on 5/2/2003 Eff: 1/1/2004 Chap: 0030

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Docket Abbreviations