

One Hundred Fourth Legislature - Second Session - 2016

Introducer's Statement of Intent

LB1103

Chairperson: Senator Les Seiler

Committee: Judiciary

Date of Hearing: February 03, 2016

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 1103 deals with an intensifying problem brought on by increasing life expectancy and increasing cost of retirement and nursing facilities dedicated to an aging population on one hand and a desire to pass accumulated wealth to heirs on the other. In simple terms the bill refines and defines parameters not addressed by LB72 adopted last year and takes several steps toward thwarting practices that shift wealth to the heirs and medical care for the aged to the taxpayers.

LB72 adopted an expanded definition of estate suggested by federal cost controllers over a decade ago; limited the powers of trustees to distribute assets to heirs before the state was reimbursed for medicaid costs; and required the Department of Health and Human Services to receive notices of probate and inheritance tax proceedings in the county court. It did not tackle the complexities of using various legal mechanisms to transfer real estate and other property to heirs to avoid personal responsibility for the aged with resources.

As proposed to be amended, LB1103 begins to address those issues within permissible limits of federal law.

Section 1 deals with the mechanics of notice to the Department regarding transfers and court proceedings involving the transfer of wealth.

Section 2 deals with making permanent certain technology fees in the Register of Deeds offices needed for processing title information.

Section 3 designates the name of the Act.

Section 4 requires certain information regarding financial ability to be disclosed to the Department and establishes consequences for non-disclosure in the application and review process.

Section 5 provides for a lien on property transferred to heirs at for little or discounted consideration where the retains use, enjoyment, or other interest in the property. The lien mechanism becomes operative upon an application for medical assistance being received by the Department. It provides a mechanism for determining lien priorities between secured lenders and the Department. It places equitable limitations on the amount of the lien. It provides a simple mechanism for excluding transactions where the transfer is not to an heir and a consequence for abusing that mechanism. It finally gives the Department authority to provide release of the lien in hardship cases or where sufficient other resources are available to satisfy the indebtedness owed to the state.

Section 6, to the full extent permitted by federal law, provides that the amounts advance for medical assistance becomes a debt of the recipient that can be collected from the deceased estate, as expanded by LB72, upon the death of the recipient and spouse. It defines without limitation the many kinds of resources associated with the deceased from which the debt may be collected before the heirs can cash in. As a fail safe it provides that outright

gifts made prior to the date of the act are not part of the estate unless those gifts were not disclosed as required by the medical assistance process. It echoes provisions of Section 5 granting authority to the Department to clear title in those cases where there is undue hardship or there can be nothing due to the state.

Other provisions deal with notice via the death certificate, notice of the Department's contact information on its webpage, and technical legal issues pertaining to statute of limitations and county court jurisdiction.

Although a myriad of legal maneuvers exist to facilitate a shift of assets to the heirs and old age expenses to the state, the simple intent of LB 1103 is to have the assets of the Medicaid recipient ultimately pay for care or to reimburse the State for care it advanced.

Principal Introducer: _____

Senator Paul Schumacher