



**House
Legislative
Analysis
Section**

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PROBATE CT. JURISDICTION: ESTATES

House Bill 4462 with committee amendments
Sponsor: Rep. Thomas G. Power

House Bill 4463 with committee amendments
Sponsor: Rep. Sharon Gire

House Bill 4464 with committee amendments
Sponsor: Rep. Sharon Gire

First Analysis (4-12-89)
Committee: Judiciary

Mich. State Law Library

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MAY 23 1989

THE APPARENT PROBLEM:

Since the Revised Probate Code was enacted in 1978, several panels of the court of appeals have issued decisions on probate court authority over various matters involving estates and trusts. Some of those decisions have prompted probate experts to seek amendments to the code and other acts that would more clearly make the probate court, rather than the circuit court, the entity with jurisdiction over issues pertaining to estates and trusts. For example, in its 1984 decision on In re Kus Estate (356 N.W.2d 23, 136 Mich. App 343), the court of appeals denied the probate court jurisdiction over a breach of contract suit brought by a deceased person's estate, saying that the probate court does not appear to have jurisdiction to hear such a case unless the suit was viewed as necessary to the settlement of an estate. Critics fault this decision for too narrowly construing the probate code, which says that the probate court has exclusive jurisdiction over "matters relating to the settlement of the estate of a deceased person."

In its 1982 decision on Van Etten v. Manufacturers National Bank of Detroit (326 N.W.2d 479, 119 Mich. App. 277), the court of appeals said that because the code did not furnish the probate court with general equitable powers, the legislature did not intend to lodge total equitable jurisdiction in the probate court. However, critics of this decision point out that the legislature intended to grant the probate court general equitable jurisdiction through its 1978 amendment to the Revised Judicature Act which said, "in the exercise of jurisdiction vested in the probate court by law, the probate court shall have the same powers as the circuit court to hear and determine any matter and make any proper orders to fully effectuate the probate court's jurisdiction and decisions." This language was added to the Revised Judicature Act as part of a revision which accompanied enactment of the Revised Probate Code. A 1983 supreme court decision, In the Matter of the Estate of Butterfield (341 N.W.2d 453, 418 Mich. 241) recognized the probate court's equitable jurisdiction as granted by that judicature act language, and further noted that the probate court has exclusive jurisdiction over trusts.

The Probate and Estate Planning Section of the State Bar of Michigan has proposed statutory amendments that would clarify and expand the probate court's jurisdiction over wills, trusts, and estates.

THE CONTENT OF THE BILL:

House Bills 4462 through 4464 constitute a package of bills to revise and clarify the probate court's jurisdiction over matters involving estates and trusts. The bills would take

effect September 1, 1989; all would have to be enacted for any to take effect.

House Bill 4462 would amend the Revised Probate Code to provide that the court's jurisdictional powers include equitable, as well as legal, powers. The court has exclusive jurisdiction over matters relating to the settlement of estates of deceased persons. The bill would specify that this includes: the internal affairs of an estate; estate administration, settlement, and distribution; declaration of rights involving estates, devisees, heirs, and fiduciaries; the construction of a will; and the determination of heirs. The latter two matters are among the issues over which present law grants the court concurrent, rather than exclusive, jurisdiction.

The bill would give the court exclusive jurisdiction over other matters which now are under concurrent jurisdiction, including the ability to settle inter vivos trusts as provided by Public Act 185 of 1966, and the ability to review and settle the accounts of a fiduciary, within the probate code's meaning of that term. The bill would specify that the exclusive jurisdiction over trusts includes proceedings concerning their validity and settlement, in addition to their internal affairs. However, the bill would provide for concurrent jurisdiction in hearing and deciding any claim by or against a fiduciary or trustee for the return of property, and any contract action by or against an estate, trust, or ward. The bill would delete language that says that when an issue involving an estate of a decedent, ward, or trust is "ancillary to the settlement" of that estate, the probate court has concurrent jurisdiction.

Where the probate court and another court share jurisdiction, a judge in the other court may order an action transferred to the probate court. Under the bill, this order would be upon motion of a party.

MCL 700.21 and 700.22

House Bills 4463 and 4464 would make complementary amendments to the Revised Judicature Act (MCL 600.846) and Public Act 185 of 1966 (the act regarding inter vivos trusts, MCL 555.82 and 555.84), respectively.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bills would clarify the probate court's jurisdiction over wills, trusts, and estates, thus eliminating any confusion which may have arisen as a consequence of some recent

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appellate decisions and restating what many believe to have been the legislature's intent in enacting the Revised Probate Code in 1978. They further would consolidate authority over wills, trusts, and estates, and more clearly establish the probate court as the entity responsible for such matters, thus simplifying the process.

POSITIONS:

A representative of the Probate and Estate Planning Section of the State Bar of Michigan testified in support of the bills. (4-11-89)

The Michigan Probate Judges Association does not have a position at this time. (4-11-89)