~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 6, 2009

**S. 382**

Introduced by Senator Hayes

S. Printed 5/6/09--S.

Read the first time February 3, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 382) to amend the Code of Laws of South Carolina, 1976, by adding Section 62‑2‑805 so as to provide for a presumption that a decedent and the decedent’s, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill as and if amended, by striking all after the enacting words and inserting the following:

/ SECTION 1. Section 62-2-804 of the 1976 Code is amended to read:

/ “Section 62-2-804. When any person is seized or possessed of any ~~estate of~~ real property held in joint tenancy at the time of his death, the joint tenancy is deemed to have been severed by the death of the joint tenant and the ~~estate~~ real property is distributable as a tenancy in common unless the instrument which creates the joint tenancy in real property, including any instrument in which one person conveys to himself and one or more other persons, or two or more persons convey to themselves, or to themselves and another or others, expressly provides for a right of survivorship, in which case the severance does not occur. While other methods for the creation of a joint tenancy in real property may be utilized, an express provision for a right of survivorship is conclusively ~~deemed~~ considered to have occurred if the will or instrument of conveyance contains the names of the devisees or grantees followed by the words ‘as joint tenants with right of survivorship and not as tenants in common’.”

SECTION 2. Part 8, Article 2, Title 62 of the 1976 code is amended by adding:

“Section 62‑2‑805. (A) For purposes of this article, tangible personal property in the joint possession or control of the decedent and the surviving spouse at the time of the decedent’s death is presumed to be owned by the decedent and the decedent’s spouse in joint tenancy with right of survivorship if ownership is not evidenced otherwise by a certificate of title, bill of sale, or other writing. This presumption does not apply to property:

(1) acquired by either spouse before marriage;

(2) acquired by either spouse by gift or inheritance during the marriage;

(3) used by the decedent spouse in a trade or business in which the surviving spouse has no interest;

(4) held for another; or

(5) devised in a written statement or list disposing of tangible personal property pursuant to Section 62‑2‑512.

(B) The presumption created in this section may be overcome by a preponderance of the evidence demonstrating that ownership was held other than in joint tenancy with right of survivorship.”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

GERALD MALLOY for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department indicates that the bill will have no impact on the General Fund of the State, nor on federal and/or other funds.

**LOCAL GOVERNMENT IMPACT:**

Counties in the FIST network of local governments were surveyed to determine the impact of this bill. Respondents indicated there is no fiscal impact with the adoption of this legislation.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 62‑2‑805 SO AS TO PROVIDE FOR A PRESUMPTION THAT A DECEDENT AND THE DECEDENT’S SPOUSE HELD TANGIBLE PERSONAL PROPERTY IN A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, FOR EXCEPTIONS TO THE PRESUMPTION, AND FOR THE STANDARD OF PROOF TO OVERCOME THE PRESUMPTION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Part 8, Article 2, Title 62 of the 1976 Code is amended by adding:

“Section 62‑2‑805. (A) For purposes of this article, tangible personal property in the joint possession or control of the decedent and the surviving spouse at the time of the decedent’s death is presumed to be owned by the decedent and the decedent’s spouse in joint tenancy with right of survivorship if ownership is not evidenced otherwise by a certificate of title, bill of sale, or other writing. This presumption does not apply to property:

(1) acquired by either spouse before marriage;

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(3) used by the decedent spouse in a trade or business in which the surviving spouse has no interest;

(4) held for another; or

(5) devised in a written statement or list disposing of tangible personal property pursuant to Section 62‑2‑512.

(B) The presumption created in this section may be overcome by a preponderance of the evidence demonstrating that ownership was held other than in joint tenancy with right of survivorship.”

SECTION 2. This act takes effect upon approval by the Governor.

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