



ARIZONA STATE SENATE
Fifty-Sixth Legislature, Second Regular Session

FACT SHEET FOR S.B. 1577

probate; mediation; jury trials

Purpose

Establishes that a party has a right to a trial by jury in the probate court unless the party has waived their right to a jury by way of written affirmation. Outlines various methods of probate dispute resolution and requires the court to disclose a party's rights regarding the use of a jury and dispute resolution methods in a probate matter.

Background

The right of trial by jury must remain inviolate. Juries in criminal cases in which a sentence of death or imprisonment for 30 years or more is authorized by law must consist of 12 persons. In all criminal cases, the unanimous consent of the jurors are necessary to render a verdict. In all other cases, the number of jurors, not less than six, and the number required to render a verdict, are specified by law ([Ariz. Const. Art. II § 23](#)).

If duly demanded, a party is entitled to trial by jury in any probate proceeding in which any controverted question of fact arises as to which any party has a constitutional right to trial by jury. If there is no right to trial by jury as prescribed, or the right is waived, the court in its discretion may call a jury to decide any issue of fact, in which case the verdict is advisory only ([A.R.S. § 14-1306](#)).

To the full extent permitted by the constitution, the court has jurisdiction over all subject matter relating to: 1) estates of decedents, including construction of wills and determination of heirs and successors of decedents, and estates of protected persons; 2) protection of minors and incapacitated persons; and 3) trusts. The court has general jurisdiction to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it, including jurisdiction to: 1) enforce orders against a fiduciary by contempt proceedings; 2) compel action by a fiduciary by body attachment; and 3) hear and determine related claims by or against fiduciaries, protected persons or incapacitated persons by or against third parties, including claims for malpractice, breach of contract, personal injury, wrongful death, quiet title and breach of fiduciary duty ([A.R.S. § 14-1302](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Asserts that, under the Arizona Constitution, the right to a jury cannot be violated and that a party's right to a trial by jury still exists in the probate court unless the party has waived their right to a jury by way of written affirmation.

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2. Encourages litigants to engage in mediation as the initial method of dispute resolution in a probate matter.
3. Requires evidence of mediation, including reasons why mediation was not pursued or accomplished, to be placed in the court record.
4. Requires a bench trial to proceed if mediation is unsuccessful or not pursued and allows a judge to issue an order or orders on the probate matters litigated.
5. Allows a litigant to demand a jury trial, within 30 days of an order being issued, if the litigant believes their rights have been substantially violated by the order of a judge following a bench trial.
6. Requires a jury trial to be scheduled within 45 days of a litigant's request.
7. Requires the standard of evidence for a jury trial in the probate court to be clear and convincing and allows a verdict to be rendered by a three-fourths vote of the jury.
8. Allows a litigant to request that a jury reexamine portions of a verdict following a bench trial and specifies it is not necessary to relitigate the entire matter.
9. Allows a jury to impose civil penalties of up to \$2,500 if the jury deems a litigant has abused the use of mediation, bench trial or jury trial and specifies awards may be directed to be paid by one party to any other specified party.
10. Allows false or withheld exculpatory evidence to be considered perjury and requires the perjury violation to be enforced pursuant to perjury and related offenses as outlined.
11. Requires the court to disclose the provisions as outlined and that copies be signed and placed in the court record.
12. Specifies, if the court fails to disclose the provisions, that all orders of the court are void and unenforceable.
13. Allows previous matters adjudicated without a jury to be reexamined using the prescribed process.
14. Asserts that the right to a trial by jury cannot be violated, and that the right still exists unless a party has been previously informed of this right and waived that right via written affirmation.
15. Specifies that the right to jury trial in the probate court is available only to the people and not to any state agency or political subdivision of Arizona.
16. Becomes effective on the general effective date.

Prepared by Senate Research

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