

IN THE SENATE

SENATE BILL NO. 1300, As Amended

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO ESTATES; AMENDING SECTION 15-2-802, IDAHO CODE, TO CLARIFY PER-  
2 SONS WHO DO NOT QUALIFY AS A SURVIVING SPOUSE; AND AMENDING CHAPTER 2,  
3 TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 15-2-804, IDAHO  
4 CODE, PROVIDING FOR THE REVOCATION OF CERTAIN PROBATE AND NONPROBATE  
5 TRANSFERS BY DIVORCE.  
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 15-2-802, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 15-2-802. EFFECT OF DIVORCE, ANNULMENT, AND DECREE OF SEPARATION. (a)  
11 ~~A person~~ An individual who is divorced from the decedent or whose marriage to  
12 the decedent has been annulled is not a surviving spouse unless, by virtue of  
13 a subsequent marriage, he is married to the decedent at the time of death. A  
14 decree of separation which does not terminate the status of husband and wife  
15 is not a divorce for purposes of this section.

16 (b) For purposes of parts 1, 2, 3 and 4 of this chapter and of section  
17 15-3-203 of this code, a surviving spouse does not include:

18 (1) ~~a person~~ An individual who obtains or consents to a final decree or  
19 judgment of divorce from the decedent or an annulment of their marriage,  
20 which decree or judgment is not recognized as valid in this state, un-  
21 less they subsequently participate in a marriage ceremony purporting to  
22 marry each to the other, or ~~subsequently~~ live together as man and wife;

23 (2) ~~a person~~ An individual who, following an invalid decree or judgment  
24 of divorce or annulment obtained by the decedent, participates in a mar-  
25 riage ceremony with a third person; or

26 (3) ~~a person~~ An individual who was a party to a valid proceeding con-  
27 cluded by an order purporting to terminate all marital property rights.

28 SECTION 2. That Chapter 2, Title 15, Idaho Code, be, and the same is  
29 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
30 ignated as Section 15-2-804, Idaho Code, and to read as follows:

31 15-2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE  
32 -- NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES. (a) Definitions. In  
33 this section:

34 (1) "Disposition or appointment of property" includes a transfer of an  
35 item of property or any other benefit to a beneficiary designated in a  
36 governing instrument.

37 (2) "Divorce or annulment" means any divorce or annulment, or any dis-  
38 solution or declaration of invalidity of a marriage, that would exclude  
39 the spouse as a surviving spouse within the meaning of section 15-2-802,

1 Idaho Code. A decree of separation that does not terminate the status of  
2 husband and wife is not a divorce for the purposes of this section.

3 (3) "Divorced individual" includes an individual whose marriage has  
4 been annulled.

5 (4) "Governing instrument" means a governing instrument executed by  
6 the divorced individual before the divorce or annulment of his marriage  
7 to his former spouse.

8 (5) "Relative of the divorced individual's former spouse" means an in-  
9 dividual who is related to the divorced individual's former spouse by  
10 blood, adoption or affinity and who, after the divorce or annulment, is  
11 not related to the divorced individual by blood, adoption or affinity.

12 (6) "Revocable," with respect to a disposition, appointment, provi-  
13 sion or nomination, means one under which the divorced individual, at  
14 the time of the divorce or annulment, was alone empowered, by law or un-  
15 der the governing instrument, to cancel the designation in favor of his  
16 former spouse or former spouse's relative, whether or not the divorced  
17 individual was then empowered to designate himself in place of his for-  
18 mer spouse or in place of his former spouse's relative and whether or not  
19 the divorced individual then had the capacity to exercise the power.

20 (b) Revocation Upon Divorce. Except as provided by the express terms of  
21 a governing instrument, a court order or a contract relating to the division  
22 of the marital estate made between the divorced individuals before or after  
23 the marriage, divorce or annulment, a divorce or annulment of a marriage:

24 (1) Revokes any revocable:

25 (i) Disposition or appointment of property made by a divorced in-  
26 dividual to his or her former spouse in a governing instrument and  
27 any disposition or appointment created by law or in a governing in-  
28 strument to a relative of the divorced individual's former spouse;

29 (ii) Provision in a governing instrument conferring a general or  
30 nongeneral power of appointment on the divorced individual's for-  
31 mer spouse or on a relative of the divorced individual's former  
32 spouse; and

33 (iii) Nomination in a governing instrument, nominating a di-  
34 vorced individual's former spouse or a relative of the divorced  
35 individual's former spouse to serve in any fiduciary or represen-  
36 tative capacity, including a personal representative, executor,  
37 trustee, conservator, agent or guardian; and

38 (2) Severs the interests of the former spouses in property held by them  
39 at the time of the divorce or annulment as joint tenants with the right  
40 of survivorship transforming the interests of the former spouses into  
41 equal tenancies in common.

42 (c) Effect of Severance. A severance under subsection (b) (2) of this  
43 section does not affect any third-party interest in property acquired for  
44 value and in good faith reliance on an apparent title by survivorship in the  
45 survivor of the former spouses unless a writing declaring the severance has  
46 been noted, registered, filed or recorded in records appropriate to the kind  
47 and location of the property, which records are relied upon, in the ordinary  
48 course of transactions involving such property, as evidence of ownership.

49 (d) Effect of Revocation. Provisions of a governing instrument are  
50 given effect as if the former spouse and relatives of the former spouse

1 disclaimed all provisions revoked by this section or, in the case of a re-  
2 voked nomination in a fiduciary or representative capacity, as if the former  
3 spouse and relatives of the former spouse died immediately before the di-  
4 vorce or annulment.

5 (e) Revival. Provisions revoked solely by this section are revived by  
6 the divorced individual's remarriage to the former spouse or by the divorce  
7 or annulment being set aside.

8 (f) No Revocation for Other Change of Circumstances. No change of cir-  
9 cumstances other than as described in this section and in section 15-2-803  
10 effects a revocation.

11 (g) Protection of Payors and Other Third Parties.

12 (1) A payor or other third party is not liable for having made a payment  
13 or transferred an item of property or any other benefit to a beneficiary  
14 designated in a governing instrument affected by a divorce, annulment  
15 or remarriage, or for having taken any other action in good faith re-  
16 liance on the validity of the governing instrument, before the payor or  
17 other third party received written notice of the divorce, annulment or  
18 remarriage. A payor or other third party is liable for a payment made or  
19 other action taken after the payor or other third party received written  
20 notice of a claimed forfeiture or revocation under this section.

21 (2) Written notice of the divorce, annulment or remarriage under para-  
22 graph (1) of this subsection must be mailed to the payor's or other third  
23 party's main office or home by registered or certified mail, return  
24 receipt requested, or served upon the payor or other third party in the  
25 same manner as a summons in a civil action. Upon receipt of written  
26 notice of the divorce, annulment or remarriage, a payor or other third  
27 party may pay any amount owed or transfer or deposit any item of prop-  
28 erty held by it to or with the court having jurisdiction of the probate  
29 proceedings relating to the decedent's estate or, if no proceedings  
30 have been commenced, to or with the court having jurisdiction of pro-  
31 bate proceedings relating to decedents' estates located in the county  
32 of the decedent's residence. The court shall hold the funds or item of  
33 property and, upon its determination under this section, shall order  
34 disbursement or transfer in accordance with the determination. Pay-  
35 ments, transfers or deposits made to or with the court discharge the  
36 payor or other third party from all claims for the value of amounts paid  
37 to or items of property transferred to or deposited with the court.

38 (h) Protection of Bona Fide Purchasers -- Personal Liability of Recipi-  
39 ent.

40 (1) A person who purchases property from a former spouse, relative of a  
41 former spouse, or any other person for value and without notice, or who  
42 receives from a former spouse, relative of a former spouse, or any other  
43 person a payment or other item of property in partial or full satisfac-  
44 tion of a legally enforceable obligation, is neither obligated under  
45 this section to return the payment, item of property or benefit, nor is  
46 liable under this section for the amount of the payment or the value of  
47 the item of property or benefit. But a former spouse, relative of a for-  
48 mer spouse, or other person who, not for value, received a payment, item  
49 of property or any other benefit to which that person is not entitled un-  
50 der this section is obligated to return the payment, item of property

1 or benefit, or is personally liable for the amount of the payment or the  
2 value of the item of property or benefit, to the person who is entitled  
3 to it under this section.

4 (2) If this section or any part of this section is preempted by federal  
5 law with respect to a payment, an item of property or any other benefit  
6 covered by this section, a former spouse, relative of the former spouse,  
7 or any other person who, not for value, received a payment, item of prop-  
8 erty or any other benefit to which that person is not entitled under this  
9 section is obligated to return that payment, item of property or bene-  
10 fit, or is personally liable for the amount of the payment or the value  
11 of the item of property or benefit, to the person who would have been en-  
12 titled to it were this section or part of this section not preempted.