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BAR BRIEFS

THE 1959 SESSION OF THE COLORADO GENERAL ASSEMBLY

By HUBERT D. HENRY

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INTRODUCTION

In the 1959 regular session of the Colorado General Assembly there were an average number of bills introduced, a more than average number printed, and an average number enacted into law. However, of 306 bills which received the approval of both houses, 222 had not been acted upon by the governor at the time of adjournment, which means that about seventy-five per cent of the bills which did receive the approval of the general assembly received their final action during the last few days of the session. This is far more bills than usually receive final approval during that period. When one considers the great length of this session, it would appear that an unusually low number of bills received final action during the early part of the session.

One explanation of this is the failure of the Judiciary Committees of the House and Senate to meet and take action. Both of these committees found it very difficult to meet and have a quorum present, and this delayed action on the great number of bills in these committees. The House Judiciary Committee had nineteen members, many of whom were on other important committees, and found it most difficult to gather the required quorum of ten members. However, once the Judiciary Committee did act, we found the Calendar Committee of the Senate and the Rules Committee of the House most cooperative in getting bar-sponsored bills on the calendar for floor action.

There were some bills which were introduced, and some which passed one house, which did not receive final approval for no apparent reason. They were bills which seemed to have merit and no known opposition. It is possible that these bills failed simply because of inadequate time in committee meetings.

The Legislative Committee of the Denver Bar Association introduced thirty-two bills. Of these, one bill relating to estates of mental incompetents was killed in committee, one relating to chattel mortgages was killed in floor action, and one relating to notice of final settlement was vetoed by the governor. Two bills did not pass in the form introduced by the bar committee, but two alternate bills substantially similar did pass. Therefore, it is proper to say that of thirty-two bills introduced by the Denver Bar Association Legislative Committee, only three failed of passage—a significant record,

particularly in view of the fact that this was probably the largest number of bills ever introduced by the Denver Bar Association Legislative Committee.

The Denver Bar Association bills came from many sources. Of fourteen probate and trust bills introduced, seven came from the Probate and Trust Law Section of the Colorado Bar Association. Bills were suggested by judges, attorneys, and other committees and sections of the bar. The Legislative Committee acted as an advocate of the bar. If an idea was suggested to the committee, it was assigned to a committee member to put into bill form. Such draft bill, or any bill presented to the committee in original draft, was thoroughly discussed and revised by the committee, sometimes several times, and the final form then agreed upon by the committee was presented to a senator or representative for introduction into the general assembly. Even after introduction into the general assembly, the bill was not free from the possibility of amendment prior to final passage. Bills were often changed substantially from the time of first introduction to the committee and before a final draft was eventually presented to the general assembly.

To give some example of how the committee worked, only two bills which I presented to the committee—one on the title of a good faith purchaser under a probate court decree and the other on notaries public—were my original idea and were presented to the general assembly in substantially the same form in which I presented the idea to the committee. Yet, I had a hand in drafting ten of the bills presented by the committee. In all but these two cases, the bill upon which I worked was either not my original idea, or was so changed by the committee during the course of drafting that it did not contain my idea at completion. In the case of one probate bill, I opposed the idea when it was first presented to the committee. In spite of this I was assigned the task of drafting the idea into a bill and then lobbying it thru the general assembly. So I substantially helped write into law an idea to which I was opposed and to which I am still opposed.

One of the bills presented by the Legislative Committee, Senate Bill 176, which would have eliminated published notice of final settlement in certain cases, was vetoed by the governor. The governor gave as his reason that the bill violated well-established principles of giving notice. This, of course, is not true. The bill protected the right of every person who had an established right in the estate to receive a notice of final settlement. Before drawing the bill we checked the Model Probate Code and the probate laws of many other states and found that they do not have the useless published notice of final settlement which we were trying to do away with by this bill.

Following is a list of bills which I believe will be of interest to the average practicing attorney. House Bill is abbreviated to "H.B.," and Senate Bill to "S.B." "D.B.A." refers to bills introduced by the Denver Bar Association Legislative Committee. Since the governor has not yet completed action on bills, some of these bills could still be vetoed.

Bills of the Denver Bar Association were introduced in the House by Representatives Robert E. Holland and Jane Woodhouse,

and in the Senate by Senators Charles Bennett, Sam Taylor, Ranger Rogers and Wilkie Ham, and our gratitude goes to them and many other fine representatives and senators who cooperated with us so well.

PROBATE AND TRUST LAW

H.B. 144. The property of an illegitimate child will descend to his father as well as his mother, and an illegitimate may inherit from his father as well as his mother, if the father has acknowledged the child, and it is no longer necessary for the parents to intermarry before the illegitimate child can inherit from the father or the father inherit from the illegitimate child.

H.B. 233. D.B.A. Every agreement to make a will or to refrain from making or revoking a will shall be void unless such agreement is in writing and signed by the party charged therewith. Wills containing mutual or reciprocal provisions shall not be any evidence that such wills were made in consideration of each other.

H.B. 235. D.B.A. If a decree of heirship is entered relying on intestacy, or if a decree probating a will, or denying probate to a will, is entered, and such decree is subsequently set aside or modified, such setting aside or modification shall not impair the rights of any person who, in reliance upon such first decree, in good faith, for value, and without notice, purchased property or acquired a lien upon property. If the person subsequently determined to be entitled to the property cannot recover it, he may recover an equitable amount from the person who first received the property, and may have an action in damages against any person who has unlawfully or negligently failed to present any will for probate.

H.B. 237. D.B.A. Gives legal authority to the probate court to enter an order of partial distribution in an estate.

H.B. 241. D.B.A. The court may, after the filing of a claim against an estate, require subsequent proceedings in connection with such claim, including trial, to be conducted in accordance with the rules of civil procedure.

H.B. 242. D.B.A. Revision of the small estates law. Increases the amount distributable without administration to 1,500 dollars, except that where distribution is made to a widow or minor children under widow's or minors' allowance, the amount could be up to the amount of the allowance or 3,500 dollars. This act requires more information in the petition for distribution than was formerly required, prohibits the filing of a petition until thirty days after death, and specifies with more particularity the persons to whom such an estate may be distributed. It also permits the setting aside of such an order within six months, but the setting aside of such order shall not affect the title of any good faith purchaser of any asset distributed under the order so set aside.

H.B. 245. D.B.A. After the expiration of the period for filing fifth class claims, a claimant or any person in interest may petition the court for an order to pay claims. The court shall order the payment of such claims as should be paid, and the personal representative may be penalized for failure to comply with such order.

H.B. 398. Uniform act for the simplification of fiduciary security transfers. Simplifies the transfer of securities by a fiduciary and removes some of the obligations formerly imposed upon a transfer agent to determine whether or not the proposed transfer was being made to a proper person.

H.B. 410. Permits original wills to be reproduced on film as a permanent record, in lieu of the former requirement that they could be preserved only in a well bound book.

S.B. 172. D.B.A. A testator may devise or bequeath property to a trustee even though the trust is subject to subsequent modification or amendment. Unless the will otherwise provides, the property paid into the trust by virtue of the will, will be governed by the terms of the trust as they exist at the time of death, even though such terms have been changed subsequent to the execution of the will.

S.B. 173. D.B.A. A policy of life insurance may designate as beneficiary or alternate beneficiary the trustee of a living trust agreement, or the trustee named in or ascertainable under the will of the insured. The insurance proceeds so paid shall, so far as creditors and inheritance tax are concerned, retain the attributes of life insurance proceeds.

S.B. 174. D.B.A. The beneficiary of an estate may disclaim the whole or any part of the benefits from such estate. Such disclaimer must be made in writing. It is not necessary to make such disclaimer within six months, but if made within six months after probate of a will, or the appointment of an administrator in an intestate estate, such disclaimer is retroactive to date of death.

S.B. 181. D.B.A. If a Colorado court appoints a foreign personal representative for a nonresident decedent or ward, the debtor or holder of property of that nonresident decedent or ward may, upon order of the court which made the appointment, pay his indebtedness or deliver the property held to the foreign personal representative, if no demand has been made by a resident creditor or personal representative within six months from the date of appointment of the foreign personal representative.

S.B. 271. D.B.A. Actions brought for the recovery of real estate shall survive and may be brought or continued notwithstanding the death of the person in favor of or against whom such action has accrued.

S.B. 178. D.B.A. A guardian of the person has no control over the property of his ward, such being the exclusive function of the court-appointed guardian of the estate. The act puts the mother on an equal footing with the father in the right to administer a minor child's estate. If the father, mother or ward over the age of fourteen can be served with personal service in Colorado and does not join in the petition, he must be notified of the petition for appointment. A temporary guardian can be appointed.

S.B. 175. D.B.A. A very technical revision of the uniform principal and income act to clarify the allocation between principal and income of partial liquidations of corporations.

INHERITANCE AND GIFT TAXES

H.B. 243. D.B.A. Increases to 3,000 dollars the annual exclusion in computing state gift taxes, in the case of any gift to any class A beneficiary. Makes the state law conform to federal law in classifying gifts to minors as being not gifts of future interests in certain cases.

H.B. 231. D.B.A. Eliminates the necessity for giving the inheritance tax commissioner the thirteen month notice of election to take the optional valuation date. The election is now made by filing the amended return, showing the election, within fifteen months after death.

S.B. 282. The department of revenue may charge a fee of one dollar for issuing a duplicate release of inheritance tax or an amended or corrected release if not made necessary by an error of the inheritance tax division. This may be a revenue raising measure improperly introduced in the Senate contrary to the state constitution.

S.B. 283. Revises the fees payable for an inheritance tax certificate of non-liability in an estate where no inheritance tax is payable, on estates in excess of 5,000 dollars. The former schedule of fees of ten and twenty dollars in such cases is revised to a scale running from seven and one-half to thirty dollars. This may be a revenue-raising measure improperly introduced in the Senate contrary to the state constitution.

REAL ESTATE TITLES

S.B. 169. D.B.A. Failure to comply with the provisions of the realty recording act shall not affect or impair the constructive notice arising from the filing for record of any instrument.

S.B. 177. D.B.A. Any instrument affecting the title to real property, after being recorded in the proper county, shall be notice to all persons, even though such instrument is not acknowledged or is defectively acknowledged. Any instrument of record for ten years, even though unacknowledged or defectively acknowledged, shall be deemed to have been properly acknowledged.

S.B. 205. D.B.A. There must be recorded in every county in which a corporation owns real property, a certified copy of the articles of incorporation, amendment thereto composite articles, certificate of merger, dissolution, etc.

MISCELLANEOUS

H.B. 234. D.B.A. "Registered mail", as contained in any statute, unless the context of the statute otherwise requires, is defined to include certified mail.

H.B. 232. D.B.A. After July 1, 1959, a notary public will file his oath and bond with the secretary of state, not the county clerk and recorder. On his seal he will have "State of Colorado" instead of the name of a county. His bond must be a surety company bond. He may file a certified copy of his appointment, oath and bond in any county. A certificate of magistracy may be issued by any coun-

ty clerk, clerk or judge of any court of record, or the secretary of state. Generally, in all respects the notary public will be a state officer and not tied to any county.

H.B. 239. D.B.A. Defines "minor" in any statute where the context of the statute does not otherwise require, to be any person under the age of twenty-one years.

H.B. 236. D.B.A. To hold personal property in joint tenancy it is necessary to use only the words "joint tenancy" or "joint tenants". Words relating to survivorship or tenancy in common are not required to be used.

H.B. 244. D.B.A. A civil action pending in any court of record may be transferred with the express consent of all parties to any other county wherein the court finds the proceedings could be more expeditiously continued.

S.B. 171. D.B.A. Relates to inventory chattel mortgages. Such a chattel mortgage may be given on after-acquired or after-produced property. A mortgagor retaining possession of such mortgaged property who does not account to the mortgagee for the proceeds of sale or disposition is guilty of larceny.

S.B. 180. D.B.A. Exempts from the present accounts receivable law assignments of rent taken in connection with real estate mortgages. Permits assignment of all accounts receivable of a debtor without the necessity of describing each account in detail. Permits accounts to be assigned with level payments to be made even though less than the amount collected by the assignor is applied on the reduction of the loan. An assignor who collects an account and fails to pay the proceeds to the assignee according to the terms of the assignment is guilty of larceny.

S.B. 182. D.B.A. When an appeal is taken from a justice of the peace to a county or superior court, the clerk shall mail a notice to the appellee, who must appear and pay his docket fee, and if the appellee fails to do so default may be entered against him, and the case disposed of accordingly. In the case of a criminal appeal from a justice of the peace, the judge, not the jury, fixes the punishment.

S.B. 201. D.B.A. Reenacts a provision for merger of corporations not for profit inadvertently repealed by the 1958 business corporations law.

S.B. 216. A bill presented by the Corporations Committee of

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the Colorado Bar Association and incorporating approximately twenty-five amendments to the 1958 business corporations act which have been found by the committee to be necessary after the enactment of the 1958 law.

H.B. 212. Presented by the Administrative Law Committee of the Colorado Bar Association. This is an administrative procedure act applying to state agencies where no specific statutory provision to the contrary is now in existence. It provides for rule making, the conduct of hearings before agencies, procedure on revocation and suspension of licenses, and judicial review of agency decisions.

H.B. 194. Supported by Colorado Bar Association. Provides for law clerks for the judges of the Supreme Court.

S.B. 127. Establishes the position of judicial administrator of the courts.

H.B. 126. Alternate to D.B.A. bill. The director of public institutions shall maintain an index of each adjudication of incompetency or competency of any mentally ill or mentally deficient person, and supply this information to persons requesting it. Each clerk of a county court must forward the required information from his court.

H.B. 127. Alternate to D.B.A. bill. In cases of temporary hospitalization as mentally ill, the records shall be kept separate from records of other cases in the county court. Upon release of any such person, the record shall be sealed and the name of the respondent omitted from the index of cases in such court, unless the respondent is adjudicated as incompetent.

H.B. 131. Increases the number of district judges for Denver from nine to ten.

H.B. 164. A person charged with murder may plead guilty to second degree murder, and such plea may be accepted with the consent of the judge and the district attorney.

H.B. 332. Completely redefines the property exempt from attachment, execution and garnishment.

H.B. 378. Permits reimbursement of a district judge serving outside his own district or a county judge serving outside his own county for his actual and necessary personal maintenance, not to exceed twenty-five dollars a day and mileage at the rate of eight cents per mile.

S.B. 73. A minor who is charged solely with the violation of a traffic law of the state or traffic ordinance of any city, town or village shall be subject to the traffic court rather than the juvenile court.

S.B. 72. The subject matter of every ordinance which may be adopted pursuant to authority conferred by state statute shall be considered to be a matter of local and municipal concern. Where the subject matter of legislation may be of local and municipal concern and also statewide concern, the existence of statewide legislation shall not deprive any municipal corporation of the right to make an ordinance thereon, unless it is expressly declared by statute that only the state shall have power to adopt legislation there-

on. Any act punishable both as a violation of a municipal ordinance and state statute shall not be prosecuted under both, and prosecution under one shall bar prosecution under the other.

S.B. 222. In any action pending before any police magistrate court or municipal court in which a party is entitled to a jury trial, the party may have a jury summoned to try the same in the same manner provided for the summoning of jurors to try causes before a justice of the peace.

SOME COMMENTS REGARDING ADMINISTRATIVE PRACTICES

A number of bills were introduced which related in some way to administrative practice and procedure. Some of these bills would have set up new boards to regulate, license and administer laws in the various fields. Others would have amended existing provisions and revised existing laws relating to administrative practices. Among the bills which were introduced but not passed, which would have placed the state in new areas of administrative practice, were bills relating to driver education, contracting, ski tows, plumbing, private detectives, and the application of agricultural chemicals. Bills which did pass which related to administrative procedure in some form were House Bill 114 relating to architecture, House Bill 157 relating to physical therapy, House Bill 215 relating to accountancy, House Bill 221 relating to engineering, House Bill 292 relating to ophthalmology, House Bill 357 relating to nursing homes, House Bill 404 relating to electricians, Senate Bill 58 relating to game and fish, Senate Bill 99 relating to optometry, Senate Bill 119 relating to chiropractic, Senate Bill 183 relating to surplus property agency, Senate Bill 241 relating to workmen's compensation, and Senate Bill 221 relating to dentistry.

These comments are made to call your attention to the ever-increasing importance of the field of administrative law in this state.

OTHER COLORADO BAR ASSOCIATION BILLS

Reference has been made above to the administrative procedure act and the amendments to the corporation law sponsored by the Colorado Bar Association. Senate Bill 244, providing for the hospitalization of alcoholics, sponsored by the subcommittee on alcoholism, was killed in the House Rules Committee. Numerous bills were introduced affecting justices of the peace in various ways. These bills were the subject of intensive committee action and considerable floor debate, but none of them passed. The Colorado Bar Association advocated the extension of life of the Judicial Council. Such a bill was not passed. However, Senate Joint Resolution 16, providing for a subcommittee of the Legislative Council to study the judicial system of the state and make report to future sessions of the general assembly, was passed. In addition Senate Bill 127 and House Bill 194 above referred to, did pass. A proposal of the criminal law committee providing that a defendant in a criminal matter might obtain copies of any signed statements made by him did not pass. A more elaborate proposal giving a defendant access to more information in the hands of the prosecutor passed the House but was killed in Senate committee.