~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 5, 2010

**S. 382**

Introduced by Senator Hayes

S. Printed 5/5/10--H.

Read the first time May 15, 2009.

**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.

Amend Title To Conform

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

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. Section 1-23-525 of the 1976 Code is amended to read:

“Section 1-23-525. ~~No~~ A member of ~~any~~ the General Assembly who is not otherwise prohibited from being elected to an administrative law judge position may not be elected to ~~such~~ that position while he is a member of the General Assembly and for a period of ~~four years~~ one year after he ceases to be a member of the General Assembly.”

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor.

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