STATE OF NEW YORK

7806

2021-2022 Regular Sessions

IN ASSEMBLY

May 24, 2021

Introduced by M. of A. McMAHON -- (at request of the Office of Victim Services) -- read once and referred to the Committee on Codes

AN ACT to amend the estates, powers and trusts law, in relation to renunciation of a beneficiary's interest; and to amend the criminal procedure law and the civil practice law and rules, in relation to commencing an action based upon a restitution order, or profits from a crime or funds of a convicted person pursuant to article twenty-two of the executive law

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph 1 of paragraph (c) of section 2-1.11 of the estates, powers and trusts law, as amended by chapter 27 of the laws of 2010, is amended to read as follows:

(1) [~~Any~~] **Subject to the limitation provided in paragraph (k) of this section, any** beneficiary of a disposition may renounce all or part of such beneficiary's interest; provided, however, that a surviving joint tenant or tenant by the entirety may renounce the interest to which such tenant succeeds, by operation of law upon the death of another joint tenant or tenant by the entirety, to the extent such interest could be the subject of a qualified disclaimer under section 2518 of the United States Internal Revenue Code of 1986, as amended.

§ 2. Section 2-1.11 of the estates, powers and trusts law is amended by adding a new paragraph (k) to read as follows:

(k) A renunciation may not be made under this section with respect to any person subject to the provisions of section six hundred thirty-two-a of the executive law; unless, however, that the office of victim services states it will not proceed with an action to obtain an injunction against any such interest, in a writing to be filed by the office of victim services in the office of the clerk of the court having jurisdiction over the will or trust agreement governing the property of which the disposition would otherwise be made or the court which issued

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD09645-02-1

letters of administration, or if there is no probate or administration, then in a surrogate's court provided by law as the place of probate or administration of the decedent's estate.

§ 3. Paragraph (a) of subdivision 6 of section 420.10 of the criminal procedure law, as amended by chapter 618 of the laws of 1992, is amended to read as follows:

(a) A fine, restitution or reparation imposed or directed by the court shall be imposed or directed by a written order of the court containing the amount thereof required to be paid by the defendant. The court's order also shall direct the district attorney to file a certified copy of such order with the county clerk of the county in which the court is situate except where the court which issues such order is the supreme court in which case the order itself shall be filed by the clerk of the court acting in his or her capacity as the county clerk of the county in which the court is situate. Such order shall be entered by the county clerk in the same manner as a judgment in a civil action in accordance with subdivision (a) of rule five thousand sixteen of the civil practice law and rules. **Notwithstanding any other provision of law, an action upon such order may be commenced within twenty years of the date such order was imposed by the court.** Even if the defendant was imprisoned for failure to pay such fine, restitution or reparation, or has served the period of imprisonment imposed, such order after entry thereof pursuant to this subdivision may be collected in the same manner as a judgment in a civil action by the victim, as defined in paragraph (b) of subdivision four of section 60.27 of the penal law, to whom restitution or reparation was ordered to be paid, the estate of such person or the district attorney. The entered order shall be deemed to constitute a judgment-roll as defined in [~~section~~] **rule** five thousand seventeen of the civil practice law and rules and immediately after entry of the order, the county clerk shall docket the entered order as a money judgment pursuant to section five thousand eighteen of such law and rules. Wherever appropriate, the district attorney shall file a transcript of the docket of the judgment with the clerk of any other county of the state. Such a restitution or reparation order, when docketed shall be a first lien upon all real property in which the defendant thereafter acquires an interest, having preference over all other liens, security interests, and encumbrances whatsoever, except:

(i) a lien or interest running to the benefit of the government of the United States or the state of New York, or any political subdivision or public benefit corporation thereof; or

(ii) a purchase money interest in any property.

§ 4. Section 213-b of the civil practice law and rules, as amended by chapter 62 of the laws of 2001, is amended to read as follows:

§ 213-b. Action by a victim of a criminal offense. Notwithstanding any other limitation set forth in this article or in article five of the estates, powers and trusts law, an action by a crime victim, or the representative of a crime victim, as defined in subdivision six of section six hundred twenty-one of the executive law, may be commenced to recover damages from a defendant[~~: (1)~~] convicted of a crime which is the subject of such action, for any injury or loss resulting therefrom within [~~seven~~] **twenty** years of the date of the crime [~~or (2) convicted of a specified crime as defined in paragraph (e) of subdivision one of section six hundred thirty-two-a of the executive law which is the subject of such action for any injury or loss resulting therefrom within ten years of the date the defendant was convicted of such specified crime~~].

§ 5. The opening paragraph of section 5014 of the civil practice law and rules, as amended by chapter 115 of the laws of 1965, is amended to read as follows:

Except as permitted by section 15-102 of the general obligations law **and paragraph (a) of subdivision six of section 420.10 of the criminal procedure law**, an action upon a money judgment entered in a court of the state may only be maintained between the original parties to the judgment where:

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law.