

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0010/3dn  
PJK:jld:jf

October 16, 2013

I made the changes suggested in the drafting instructions, except that, in the definitions of “property of a decedent,” I explicitly excluded living trusts, rather than just striking the phrase. “Living trust” currently is part of a list that begins with “including.” Therefore, all of the different types of arrangements for transferring assets that are listed after the word “including” are merely examples. Taking away one example by striking it has no substantive effect. I assumed that the intent was to exclude assets transferred by a living trust from property that is subject to recovery. Let me know if that was not the intent.

In the presumption language, “which may be rebutted by clear and convincing evidence” was removed. This may create a question about whether the presumption may be rebutted or not. Therefore, I would recommend that at least the word “rebuttable” be reinstated before “presumption.” Also in the presumption language, if the presumption is that “all of the property of the deceased nonrecipient surviving spouse was marital property held with the recipient,” should the “100 percent of the property of the deceased nonrecipient spouse” that is subject to the department’s claim be limited by the language “to the extent of the recipient’s interest”?

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