

IN THE SENATE

SENATE BILL NO. 1322

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO THE UNIFORM PROBATE CODE; AMENDING SECTION 15-2-616, IDAHO CODE, TO REVISE A PRESUMPTION ON A DEVISE OR BEQUEST TO CERTAIN PERSONS, TO PROVIDE FOR RESTRICTIONS ON INTER VIVOS GIFTS TO CERTAIN INDIVIDUALS AND TO DEFINE TERMS.

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

SECTION 1. That Section 15-2-616, Idaho Code, be, and the same is hereby amended to read as follows:

15-2-616. RESTRICTION ON DEVISES ~~TO NURSING HOME OR RESIDENTIAL OR ASSISTED LIVING FACILITY OPERATORS~~ AND INTER VIVOS GIFTS TO CERTAIN PERSONS. (1) A devise or bequest during the time period set forth in subsection (3)(b) of this section involving either real or personal property, directly or indirectly, to any person who owns, operates or is employed at a nursing home, residential or assisted living facility or to any person who provides health care services at any home, including the testator's home, whether or not licensed, in which the testator was a resident within one (1) year of his death shall be presumed to have been the result of undue influence, rebuttable by clear and convincing evidence. This section shall apply to all property passing by testate succession after July 1, 1983, regardless of when the will was written; provided, this section shall in no way limit or affect the rights of a beneficiary who is related to a relative of the testator, or who is a charitable or benevolent society or corporation or other charitable or benevolent entity; provided further that the foregoing limitations shall not apply to wills of persons whose death is caused by accidental means and whose wills are executed prior to the accident which results in death.

(2) An inter vivos gift during the time period set forth in subsection (3)(b) of this section involving either real or personal property, directly or indirectly, to any person who owns, operates or is employed at a nursing home, residential or assisted living facility or to any person who provides health care services at any home, including the donor's home, whether or not licensed, in which the donor was a resident, shall be presumed to have been the result of undue influence, rebuttable by clear and convincing evidence; provided, this section shall in no way limit or affect the rights of a donee who is a relative of the donor, or who is a charitable or benevolent society or corporation or other charitable or benevolent entity.

(3) For purposes of this section:

(a) "Relative" shall mean an individual related by consanguinity within the third degree as determined by the common law; or a spouse, or an individual related to a spouse within the third degree as determined by the common law; or an individual in an adoptive relationship within the third degree as determined by the common law.

1 (b) "Time period" shall mean from the commencement of the care provided
2 to the testator or donor until the earlier of:

3 (i) One (1) year from the cessation of the care; or

4 (ii) The testator's death.