

SENATE BILL No. 480

By Committee on Judiciary

2-4

AN ACT concerning probate; relating to estates of absentees; reviving and amending K.S.A. 59-2701, 59-2702, 59-2703, 59-2704, 59-2705, 59-2707 and 59-2708 and repealing the revived sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 59-2701 is hereby revived and amended to read as follows: 59-2701. (a) The district courts shall have jurisdiction to administer, in accordance with the provisions of ~~this act~~ K.S.A. 59-2701 through 59-2705 and 59-2707, and amendments thereto, the property within this state of ~~(a)~~:

(1) Any person who has disappeared and remains unheard from by the persons most likely to hear from ~~him or her~~, such person; or ~~(b)~~

(2) any person who is reported by the United States department of defense to be a prisoner of war or missing in action.

(b) The word "absentee" as used in ~~this act~~ K.S.A. 59-2701 through 59-2705 and 59-2707, and amendments thereto, shall refer to such a person.

Sec. 2. K.S.A. 59-2702 is hereby revived and amended to read as follows: 59-2702. (a) A trustee may be appointed for the estate of any ~~such~~ absentee to administer ~~the same~~ such estate until such time as ~~he or she~~ absentee returns or is found to be dead in accordance with ~~the subsequent provisions hereof~~ K.S.A. 59-2701 through 59-2705 and 59-2707, and amendments thereto. A petition for the appointment of such trustee may be filed by any person. Venue for the proceedings ~~thereon~~ on such petition shall be in accordance with the laws applicable to the appointment of conservators for nonresident's proposed conservatees. The petition shall include:

(1) The name, age, and the last known residence of the absentee,;

(2) the fact of the absentee's disappearance and all known circumstances pertaining thereto, including the date and place of ~~his or her~~ the absentee's last known whereabouts,;

(3) the names and addresses of ~~his or her~~ the absentee's known next of kin and spouse, if any,;

(4) the names and addresses of any other known persons who are likely to hear from the absentee,; and

(5) the general nature and probable value of ~~his or her~~ the absentee's

1 real and personal property.

2 (b) Notice of the filing of the petition and of the hearing ~~thereon on~~
3 *such petition* shall be given in accordance with K.S.A. 59-2209 ~~to through~~
4 59-2211, ~~inclusive and amendments thereto~~, and copies ~~thereof of such~~
5 *petition shall be* mailed to ~~said~~ the next of kin, spouse if any, and the ~~said~~
6 other persons likely to hear from the absentee as shown by the petition.
7 Upon the hearing the court shall appoint a trustee if satisfied of the truth of
8 the allegations of the petition and that there is property of the absentee
9 within the state subject to being lost or dissipated unless a trustee is
10 appointed to manage and conserve ~~the same such property~~.

11 Sec. 3. K.S.A. 59-2703 is hereby revived and amended to read as
12 follows: 59-2703. The provisions of the laws applicable to the oath, bond,
13 inventory, accountings, debts, liabilities, powers, duties and discharge of
14 conservators shall govern in the administration and management of the
15 estates of such absentees and the trustees ~~thereof of such estates~~.

16 Sec. 4. K.S.A. 59-2704 is hereby revived and amended to read as
17 follows: 59-2704. (a) An absentee shall be presumed to be dead for the
18 purposes of ~~this act~~ K.S.A. 59-2701 through 59-2705 and 59-2707, and
19 *amendments thereto*, if:

20 (1) The absentee ~~shall remain~~ *remains* unheard from by those persons
21 most likely to hear from such absentee for a period of not less than five
22 years; and

23 (2) one or more persons who had a bona fide motive for locating the
24 absentee have conducted a diligent search for the absentee in all places
25 where such absentee's presence could reasonably be expected.

26 (b) If no such search has been made with reference to an absentee
27 who has been unheard from for more than five years and for whose estate
28 a trustee has been appointed in accordance with ~~this act~~ K.S.A. 59-2701
29 *through 59-705 and 59-2707, and amendments thereto*, the district court
30 may on the court's own motion order the trustee to conduct such search
31 under the direction of the court and pay the reasonable expenses ~~thereof~~
32 *for such search* out of the estate.

33 (c) Absentees missing as a result of a catastrophic event or disaster
34 shall be presumed dead under K.S.A. 59-2708, and amendments thereto.

35 Sec. 5. K.S.A. 59-2705 is hereby revived and amended to read as
36 follows: 59-2705. (a) At any time, upon petition signed by the absentee or
37 on a petition of an attorney-in-fact acting upon an adequate power of
38 attorney granted by the absentee, the court shall declare the absentee alive
39 and order the state registrar to rescind the presumptive death certificate
40 and direct the termination of the trust estate and the transfer of all property
41 ~~held thereunder~~ *under such trust estate* to the absentee or to the designated
42 attorney-in-fact.

43 (b) Upon the petition of any person interested in the estate of an

1 absentee presumed to be dead, and on proof thereof in addition to all other
2 matters required by law to be proved for the appointment of an
3 administrator or executor, the district court shall proceed to administer the
4 estate of such absentee as if such absentee was known to have died on the
5 date of the filing of such petition.

6 (c) Upon petition of any person interested in the estate of any person
7 reported by the United States department of defense as missing in action
8 for over three years, the district court, upon proof that such person has
9 been reported as missing in action for over three years, shall proceed to
10 terminate the trust estate of such absentee in the same manner as the final
11 settlement of a decedent's estate. The district court shall proceed to
12 administer the estate of such absentee as if such absentee was known to
13 have died on the date of the filing of such petition, but the district court
14 shall not declare the absentee to be deceased.

15 (d) All laws now or hereafter enacted for the administration of estates
16 of known decedents shall be applicable to absentees declared
17 presumptively dead under K.S.A. 59-2708, and amendments thereto, and
18 subsection (b) ~~of this section~~, except:

19 (1) No administrator, executor or personal representative of such
20 absentee shall make a final distribution of the assets of such estate until the
21 expiration of three years after the date of presumptive death, ~~provided~~
22 ~~except~~ that assets in the estate of such absentee ~~which that~~ are exempt
23 from attachment by creditors, including moneys paid by the United States
24 of such nature and other assets of any such estate ~~which that~~ would
25 otherwise be available for the support of the spouse, children and other
26 dependents of such absentee, if such absentee were alive, after allowance
27 for debts and costs of administration, may be paid for the support of the
28 spouse and children and dependents of such absentee upon order of the
29 court until such time as distribution may be made or administration
30 terminated. If the absentee has not appeared after the period of three years
31 the court's finding shall become effective to permit final distribution of
32 such person's estate.

33 (2) Upon final settlement of the absentee's estate the provisions of
34 subsection (e) shall apply.

35 (e) All laws now or hereafter enacted for the administration of estates
36 of known decedents shall be applicable to the settlement of estates
37 authorized by subsections (b), (c) and (d) except:

38 (1) If such absentee ~~should return~~ *returns* within five years after entry
39 of the order of final settlement, any order made during such administration
40 shall be subject to being set aside on such absentee's application for good
41 cause shown and filed within three months after such absentee learned, or
42 reasonably could have learned of such order; ~~but~~. Setting aside any such
43 order shall not prejudice the rights of any person who has acquired an

1 interest in any property for value, or of any trustee, executor or
2 administrator who has acted in good faith in accordance with the
3 provisions of ~~this act~~ *K.S.A. 59-2701 through 59-2705 and 59-2707, and*
4 *amendments thereto.*

5 (2) No distributee of a share or interest in the estate shall receive or
6 be assigned ~~the same~~ *such share or interest* on final settlement until such
7 distributee ~~shall have~~ *has* filed a bond conditioned that if such absentee
8 ~~shall return~~ *returns* within five years ~~from~~ *after* receipt or assignment of
9 ~~the same and make~~ *such share or interest and makes* a claim thereto, such
10 property, or the reasonable value thereof if it has been disposed of,
11 together with the net income therefrom, shall be returned to the absentee.
12 The court may require sureties on such bond, ~~which and such~~ sureties shall
13 be subject to the approval of the court. No action shall be brought on such
14 bond more than one year after the absentee learned of such distribution nor
15 in any event more than six years after the date of such distribution.

16 Sec. 6. K.S.A. 59-2707 is hereby revived and amended to read as
17 follows: 59-2707. ~~This act~~ *K.S.A. 59-2701 through 59-2705 and 59-2707,*
18 *and amendments thereto,* shall be ~~and construed~~ as a part of and
19 supplemental to the Kansas probate code.

20 Sec. 7. K.S.A. 59-2708 is hereby revived and amended to read as
21 follows: 59-2708. (a) In cases of catastrophic events, disasters, states of
22 emergency or states of war emergency, the death of persons whose bodies
23 could not be found or identified shall be established according to the
24 following procedure:

25 (1) The governor or president of the United States or both shall have
26 declared a state of emergency or state of war emergency.

27 (2) An absentee shall be presumed dead immediately after the
28 catastrophic event if:

29 (A) The absentee's body could not be recovered due to the nature of
30 the catastrophic event; and

31 (B) evidence presented to a court of proper jurisdiction places the
32 absentee at the site of the catastrophic event on the date and at the time of
33 the event.

34 (3) Upon a finding of presumptive death, the district court shall order
35 the coroner in the county ~~in which~~ *where* death occurred to prepare a death
36 certificate with the cause of death identified as due to the catastrophic
37 event in accordance with K.S.A. 65-2412(c) and 65-2414, and
38 amendments thereto.

39 (4) Upon receipt of the death certificate the office of vital statistics
40 shall register and make available for issuance certified copies of the death
41 certificate in accordance with K.S.A. 65-2401 et seq., *and amendments*
42 *thereto.*

43 (5) If pertinent new information is received by the court, pursuant to a

1 court order, the presumptive death certificate may be amended in
2 accordance with K.S.A. 65-2422c, *and amendments thereto*. In a case
3 where the absentee is found to be alive, the presumptive death certificate
4 shall be rescinded.

5 (6) The secretary of the department of health and environment may
6 by rule and regulation prescribe forms and procedures to implement the
7 provisions of this ~~act~~ *section and K.S.A. 59-2704 and 59-2705, and*
8 *amendments thereto*.

9 (b) For the purposes of this ~~act~~ *section and K.S.A. 59-2704 and 59-*
10 *2705, and amendments thereto*:

11 (1) "Catastrophic event" means a disaster that will require massive
12 state or federal assistance, or both, including immediate military
13 involvement.

14 (2) "Disaster" means any natural, technological or civil emergency
15 that causes damage of sufficient severity and magnitude to result in a
16 declaration of a state of emergency by the governor or president of the
17 United States or a state of war emergency by the president of the United
18 States.

19 (3) "State of emergency" means the declaration of the existence of
20 conditions of disaster, catastrophe or extreme peril to the safety of persons
21 or property within the state caused by air or water pollution, fire, flood,
22 storm, epidemic, earthquake, resource shortages or other natural or man-
23 made conditions other than conditions causing a "state of war emergency",
24 which conditions by reasons of their magnitude are or are likely to be
25 beyond the control of the services, personnel, equipment and facilities of
26 any single county or municipality, or both, and requires combined forces
27 of the state to combat.

28 (4) "State of war emergency" means the condition which exists
29 immediately, with or without a declaration by the governor, whenever this
30 state or nation is attacked by an enemy of the United States or upon receipt
31 by the state of a warning from the federal government indicating an action
32 against persons or society including but not limited to, emergency attack,
33 sabotage, terrorism, civil unrest or other action impairing the orderly
34 administration of government is probable or imminent.

35 Sec. 8. K.S.A. 59-2701, as revived by section 1 of this act, 59-2702,
36 as revived by section 2 of this act, 59-2703, as revived by section 3 of this
37 act, 59-2704, as revived by section 4 of this act, 59-2705, as revived by
38 section 5 of this act, 59-2707, as revived by section 6 of this act, and 59-
39 2708, as revived by section 7 of this act, are hereby repealed.

40 Sec. 9. This act shall take effect and be in force from and after its
41 publication in the Kansas register.