

Approved March 12, 1984
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

1:45 ~~a.m.~~/p.m. on March 2, 1984 in room 526-S of the Capitol.

All members were present except:

Representative Justice was excused. Representatives Blumenthal, Douville, Ediger, Erne, Harper, Whiteman, and Wunsch were absent.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes' Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

None.

The Committee discussed and took action on HB 3012 and HB 3013, acts relating to probate procedure.

The Chairman reported on a telephone call received from Steve Peterson, a Salina attorney, who, along with eight other members of his law firm, support both bills.

Staff explained amendments to HB 3012 in Attachment No.1. Representative Knopp moved to adopt the amendments and to correct the spelling of "decedent" in line 130, seconded by Representative Schweiker. A member noted a quorum was not present to take action. The Chairman said, due to the deadline for Committee action, a vote of consensus to amend would be taken, and the motion carried. Shortly after the vote, a quorum was present and agreed to adopt the amendments.

Representative Patrick expressed concern that family settlement agreements would be eliminated if HB 3013 is not passed or merged with HB 3012. He moved to amend HB 3013 into HB 3012, seconded by Representative Knopp. The Chairman noted other amendments to HB 3013 should be considered first. The motion and second were withdrawn.

Representative Patrick noted inconsistencies in line 46 of HB 3013 regarding "valid settlement agreement" and line 107 regarding "unanimous written agreement" and moved that in all places where "unanimous written agreement" is used it should be changed to "valid settlement agreement". Representative Vancrum seconded the motion. Staff pointed out, if HB 3013 is merged with HB 3012, the correct language is already in HB 3012. No vote was taken on the motion.

Amendments to HB 3013 in Attachment No.2 were reviewed. Representative Knopp moved to adopt the amendments, seconded by Representative Solbach. Motion carried. Representative Patrick moved to amend HB 3012 by incorporating HB 3013 into it, leaving HB 3012 in existence, seconded by Representative Duncan. Motion carried.

Representative Knopp moved to report HB 3012, as amended, favorably, seconded by Representative Patrick. Motion carried.

The meeting was adjourned at 2:15 p.m.

HOUSE BILL No. 3012

By Committee on Judiciary

2-15

0016 AN ACT concerning probate procedure; enacting the Kansas
0017 informal administration act; providing for procedures for in-
0018 formal administration of estates; amending K.S.A. 59-618a and
0019 repealing the existing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 New Section 1. This act may be cited as the Kansas informal
0022 administration act and shall be construed as supplemental to and
0023 as a part of the Kansas probate code.

0024 New Sec. 2. (a) Any person interested in an estate may
0025 petition for informal administration.

0026 (b) The petition shall contain:

0027 (1) The name and residence address of the petitioner.

0028 (2) The interest of the petitioner in the estate.

0029 (3) The name, residence address and date and place of death
0030 of the decedent and a statement that there is property in this state
0031 which is subject to administration.

0032 (4) The names, ages, residences, addresses and relationships
0033 of the heirs, devisees and legatees of the decedent and any
0034 named fiduciary, so far as known or can with reasonable dili-
0035 gence be ascertained.

0036 (5) The name and address of the person who prepared the
0037 will, if known or ascertainable with ~~due~~ diligence.

0038 (6) An inventory and valuation or appraisal of all of the assets
0039 of the decedent. This information may be set forth in the peti-
0040 tion, listed in a separate document attached to the petition or
0041 supplied by a copy of the Kansas inheritance tax return attached
0042 to the petition.

0043 (7) A listing of the debts of the decedent, both paid and
0044 unpaid; an estimate of costs and expenses of informal adminis-

reasonable

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0046 tration, including reasonable fees; and a statement of those
 0047 specific moneys belonging to decedent's estate which are pro-
 0048 posed to be used to pay unsatisfied debts of the decedent. This
 0049 information may be set forth in the petition, listed in a separate
 0050 document attached to the petition or, to the extent contained
 0051 therein, supplied by a copy of the Kansas inheritance tax return
 0052 attached to the petition.

0052 (8) Proof of the determination and payment of Kansas inheri-
 0053 tance taxes.

0054 (9) The nature and form of disposition requested, including a
 0055 statement of whether the property will pass by will, the law of
 0056 descent and distribution or settlement agreement. If the property
 0057 is to pass by will or settlement agreement, the will or settlement
 0058 agreement shall be attached.

0059 (10) The reasons informal administration is appropriate.

0060 (11) A request that the petitioner or other named person be
 0061 designated to carry out the orders made by the court.

0062 (12) The amount and type of bond or bonds to be given.

0063 (13) A statement that if informal administration is denied,
 0064 simplified or supervised administration is requested and the
 0065 name and address of the person proposed to be appointed as
 0066 executor or administrator.

0067 New Sec. 3. Notice of hearing in all proceedings com-
 0068 menced pursuant to this act in which title to real estate is to be
 0069 assigned by the court shall be given pursuant to K.S.A. 59-2209
 0070 and amendments thereto. In all other cases, notice shall be given
 0071 or waived as provided in K.S.A. 59-2208 and amendments
 0072 thereto. A copy of the petition, including all attachments shall
 0073 accompany every notice of hearing mailed in every proceeding
 0074 under this act, and proof of service shall be made pursuant to
 0075 K.S.A. 59-2211 and amendments thereto.

0076 New Sec. 4. ~~(a)~~ Whenever the court finds that an estate can
 0077 be completely administered by informal administration, the
 0078 court may make any of the following orders:

0079 (1) ~~Where applicable,~~ for family allowances pursuant to
 K.S.A. 59-403 and amendments thereto.

0081 ~~(2) For informal administration of the estate.~~

and expenses of informal administration

(a) Whenever the court finds that an estate can be completely administered by informal administration, the court shall make the following orders:

(1) For informal administration of the estate.

(2) Assigning, with sufficient particularity to allow their transfer, all assets of the estate, remaining after payment of any family allowances, debts and expenses, to the proper legatees and devisees, if there is an instrument admitted to probate as decedent's last will and testament; to the proper heirs, if pursuant to the law of descent and distribution; or to the proper persons entitled thereto, if pursuant to a settlement agreement.

(b)

, if applicable

0082 ~~(3)~~ For the payment of all unpaid debts, in order of their
0083 preference, and all expenses of the informal administration.

(2)

0084 ~~(4)~~ Designating specific moneys of the estate to be used for
0085 payment of the debts and expenses of informal administration
0086 and designating the person authorized to pay them.

(3)

0087 ~~(5)~~ For release of the nominated fiduciary, if any, from all
0088 responsibility and liability.

(4)

0089 ~~(6)~~ Admitting to probate the decedent's last will and testa-
0090 ment, upon proper proof.

(5)

0091 ~~(7)~~ Assigning all other assets of the decedent's estate to the
0092 proper legatees and devisees, if there is an instrument admitted
0093 to probate as decedent's last will and testament; to the proper
0094 heirs, if pursuant to the law of descent and distribution; or to the
0095 proper persons entitled thereto, if pursuant to a settlement
0096 agreement.

(6)

0097 ~~(8)~~ The giving of bond, if appropriate.

(c)

0098 ~~(b)~~(1) The person ordered to pay debts and expenses of
0099 informal administration under subsection ~~(a)~~(4), unless excused
0100 by a testamentary instrument, shall file a bond with sufficient
0101 sureties in an amount equal to not less than 125% of the amount
0102 of money authorized to be used for payment of the debts and
0103 expenses of informal administration under subsection ~~(a)~~(4).

(b) (3)

0104 (2) If distribution of the estate, under subsection ~~(a)~~(7), is
0105 ordered before six months from the date of death or before any
0106 statute of nonclaims has run, any distributee who receives any
0107 property pursuant to that order shall give a redelivery bond with
0108 sufficient sureties in the amount of the value of the property
0109 assigned to that distributee.

(b) (3)

0110 (3) Bonds shall run for a period of time beginning with the
0111 date of the court's order and continuing until the running of any
0112 statute of nonclaims. The bonds shall be for the benefit of the
0113 heirs, devisees, legatees, trustees, creditors and nominated fidu-
0114 ciary, if any.

(a) (2)

0115 New Sec. 5. ~~If, on hearing, the court determines that infor-~~
0116 ~~mal administration is not appropriate, the court may dismiss the~~
0117 ~~proceeding, continue for a determination of descent proceeding~~
0118 ~~or order that simplified administration or supervised adminis-~~

may determine

because of contested matters, the need for admini-
stration, disagreement among beneficiaries or any
other appropriate circumstances. If the court
determines that informal administration is not
appropriate

0119 tration ensue without further notice of hearing, other than notice
0120 to creditors pursuant to K.S.A. 59-709 and amendments thereto.

0121 New Sec. 6. The district court, in its discretion, may order an
0122 appraisal of the property before making the orders contemplated
0123 by subsection (a) of section 4. The appraisal shall be made by one
0124 or more appraisers approved by the court.

0125 Sec. 7. K.S.A. 59-618a is hereby amended to read as follows:
0126 59-618a. (a) ~~Whenever a decedent dies testate,~~ Any person pos-
0127 sessed ~~the~~ a decedent's will may file in the district court of the
0128 county of the decedent's last residence ~~the~~ decedent's will and
0129 an affidavit which complies with subsection (b) if: (1) *The*
0130 *decedent dies testate;* (2) ~~the decedent leaves~~ *no real prop-*
0131 *erty;* and (3) *the value of the decedent's estate is less than the*
0132 *total of all demands enumerated in K.S.A. 59-1301 and amend-*
0133 *ments thereto.*

0134 (b) An affidavit filed pursuant to this section shall state: (1)
0135 *The name, residence address and date and place of death of the*
0136 *decedent;* (2) the names, addresses and relationship of all the
0137 decedent's heirs, legatees and devisees which are known to the
0138 affiant after a diligent search and inquiry; ~~(2)~~ (3) the name and
0139 address of any trustee of any trust established under the will; ~~(3)~~
0140 (4) the property left by the decedent and its approximate valua-
0141 tion; ~~(4)~~ (5) the approximate amount and nature of any demands
0142 enumerated in K.S.A. 59-1301 which were outstanding against
0143 the decedent's estate upon the decedent's death; and ~~(5)~~ (6) that
0144 the will is being filed with the district court for the purpose of
0145 preserving it for record in the event that ~~formal~~ probate pro-
0146 ceedings are later required; and (7) *that a copy of the affidavit*
0147 *and will has been mailed to each heir, legatee and devisee*
0148 *named in the affidavit.*

0149 (c) The fee for filing a will and affidavit pursuant to this
0150 section shall be \$10.

0151 (d) ~~Upon receipt of a will and affidavit filed pursuant to this~~
0152 ~~section, the court shall file the will and affidavit in its records~~
0153 ~~and shall give notice thereof to all heirs, legatees, devisees and~~
0154 ~~trustees named in the affidavit.~~

0155 (e) ~~If,~~ within nine months after the filing of a will and

decedent's estate contains

ounty of the decedent's last residence the decedent's will and an affidavit which complies with subsection (b).

(b) An affidavit filed pursuant to this section shall state: (1) The names, addresses and relationship of all the decedent's heirs, legatees and devisees which are known to the affiant after a diligent search and inquiry; (2) the name and address of any trustee of any trust established under the will; (3) the property left by the decedent and its approximate valuation; (4) the approximate amount and nature of any demands enumerated in K.S.A. 59-1301 and amendments thereto which were outstanding against the decedent's estate upon the decedent's death; and (5) that the will is being filed with the district court for the purpose of preserving it for record in the event that formal probate proceedings are later required.

(c) The fee for filing a will and affidavit pursuant to this section shall be \$10.

(d) Upon receipt of a will and affidavit filed pursuant to this section, the court shall file the will and affidavit in its records and shall give notice thereof to all heirs, legatees, devisees and trustees named in the affidavit.

(e) If, within ~~nine~~ six months after the filing of a will and affidavit pursuant to this section, no person has petitioned for the probate of the will, the heirs, legatees and devisees named in the will and any trustee of any trust established under the will may by unanimous written agreement declare the will void. In such case the court shall distribute the assets of the estate under the terms of a settlement agreement or by proceedings to determine descent as provided in K.S.A. 59-2250 and amendments thereto.

Sec. 5. K.S.A. 59-803 is hereby amended to read as follows: 59-803. The title of any purchaser in good faith, without knowledge of a will, to any real estate situated in this state, derived from the heirs of any person not domiciled in this state at the time of ~~his or her~~ the person's death, shall not be defeated by the production of the will of ~~such~~ the decedent unless a petition shall be made for the probate of such will in this state is filed within ~~nine~~ (9) six months from the death of the testator.

Sec. 6. K.S.A. 59-808 is hereby amended to read as follows:

valid

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0305 ~~he or she~~ *the guardian ad litem* represents; or by an attorney
0306 under the soldiers' and sailors' civil relief act on behalf of an
0307 attorney appointed pursuant to ~~the soldiers' and sailors' civil~~
0308 ~~relief that~~ act and all those whom such attorney represents.

0309 Sec. 14. K.S.A. 59-2209 is hereby amended to read as fol-
0310 lows: 59-2209. When notice of hearing is required by any provi-
0311 sion of this act, by specific reference to this section, such notice
0312 shall be published once a week for three ~~(3)~~ consecutive weeks
0313 in some newspaper of the county authorized by law to publish
0314 legal notices. The first publication shall be ~~had made~~ within ~~ten~~
0315 ~~(10)~~ 10 days after the order fixing the time and place of the
0316 hearing; and, within seven ~~(7)~~ days after first published notice,
0317 the petitioner shall mail or cause to be mailed, postage prepaid, a
0318 copy of the notice to each heir, devisee, and legatee or guardian
0319 and ward ~~or~~, conservator and conservatee or guardian *ad litem*,
0320 as the case may be, other than the petitioner, whose name and
0321 address are known to ~~him or her~~ *the petitioner*. A copy of the
0322 *petition, any attachments to it and, when applicable, a copy of*
0323 *the will, accounting and settlement agreement shall be included*
0324 *with the notice, unless excused by court order*. The date set for
0325 the hearing shall not be earlier than seven ~~(7)~~ days nor later than
0326 ~~fourteen (14)~~ 14 days after the date of the last publication of notice.

0327 Whenever notice is mailed to a person residing in a foreign
0328 country, such notice shall be mailed by air mail.

0329 Sec. 15. K.S.A. 59-2211 is hereby amended to read as fol-
0330 lows: 59-2211. In all cases of notice by publication, the newspa-
0331 per shall be selected by the petitioner or other person required
0332 to give such notice. ~~Proof by affidavit of service~~ In all cases
0333 requiring notice, whether by publication, mailing, or otherwise,
0334 *proof by affidavit of service of notice and, unless excused by*
0335 *court order, a copy of the petition and any attachments to it*
0336 shall be filed before the hearing. No defect in any notice nor in
0337 the service thereof, not affecting the substantial rights of the
0338 parties, shall invalidate any proceedings after such notice and
0339 the proof of service thereof shall have been approved by the
0340 court.

0341 Sec. 16. K.S.A. 59-2229 is hereby amended to read as fol-

0416 publish legal notices, of the county where the sale is to be had.
0417 Notice shall be published for two consecutive weeks in a news-
0418 paper authorized to publish legal notices in the county where
0419 the sale is to be held.

0420 Sec. 20. K.S.A. 59-2249 is hereby amended to read as fol-
0421 lows: 59-2249. On the hearing, unless otherwise ordered, the
0422 executor or administrator shall, and other persons may, be ex-
0423 amined relative to the account and the distribution of the estate.
0424 If all the taxes payable by the estate have been paid so far as
0425 there are funds to pay them and the account is correct, it shall be
0426 settled and allowed; If the account is incorrect, it shall be
0427 corrected and then settled and allowed. Upon such settlement
0428 and allowance, the court shall determine the heirs, devisees, and
0429 legatees entitled to the estate and assign the same to them by its
0430 decree, pursuant to the terms of the will, the laws of intestate
0431 succession in effect on the date of the decedent's death or a valid
0432 settlement agreement. The decree shall name the heirs, devi-
0433 sees, and legatees; describe the property; and state the propor-
0434 tion or part thereof to which each is entitled. ~~Said~~ The decree
0435 shall be binding as to all the estate of the decedent, whether
0436 specifically described in the proceedings or not. In the estate of a
0437 testate decedent, no heirs need be named in the decree unless
0438 they have, as such, an interest in the estate.

0439 No final decree shall be entered until after the determination
0440 and payment of inheritance taxes. When the final decree in-
0441 cludes real estate, such decree, or a certified copy thereof of it,
0442 may be entered on the transfer record of the county clerk of the
0443 proper county; and. When any such decree which includes real
0444 estate shall become final, it shall be the duty of the court to
0445 transmit a certified copy thereof of it to the county clerk and the
0446 county clerk shall enter the same it on the transfer record in said
0447 the clerk's office.

0448 In the event that If any person entitled to receive a distributive
0449 share of an estate pursuant to a decree hereunder is the defend-
0450 ant in a garnishment action or proceeding wherein in which the
0451 executor or administrator of the estate is the garnishee, said the
0452 person's distributive share shall be subject to the order of gar-

once a week

0453 nishment served upon the executor or administrator, and no
 0454 property or funds of the estate shall be delivered or paid over to
 0455 ~~said the~~ person until further order of the court from which the
 0456 order of garnishment was issued.

0457 Sec. 21. K.S.A. 59-2250 is hereby amended to read as fol-
 0458 lows: 59-2250. Whenever any person has been dead for more
 0459 than ~~nine (9)~~ six months and has left property, or any interest
 0460 ~~therein, in property~~ and no petition has been filed for the
 0461 probate of a will nor administration commenced in this state, or
 0462 in which administration has been had without a determination of
 0463 the descent of such property, any person interested in the estate,
 0464 or claiming an interest in such property, may petition the district
 0465 court of the county of the decedent's residence, or of any county
 0466 wherein real estate of the decedent is situated, to determine its
 0467 descent *under the laws of intestate succession of a valid settle-*
 0468 *ment agreement.*

0469 Sec. 22. K.S.A. 59-2251 is hereby amended to read as fol-
 0470 lows: 59-2251. Upon the filing of such petition, the court shall fix
 0471 the time and place for the hearing thereof, notice of which shall
 0472 be given pursuant to K.S.A. 59-2209 *and amendments thereto.*
 0473 Upon proof of the petition, the court shall allow ~~the same it~~ and
 0474 enter ~~its~~ *the court's* decree assigning the property to the persons
 0475 entitled thereto at the time of the decedent's death pursuant to
 0476 the law of intestate succession ~~then in force in effect on the date~~
 0477 *of the decedent's death or a valid settlement agreement.* Unless
 0478 the death of the decedent has occurred more than ~~ten (10)~~ 10
 0479 years prior to the decree of descent, no decree shall be entered
 0480 until after the determination and payment of inheritance taxes.

0481 Sec. 23. K.S.A. 59-2252 is hereby amended to read as fol-
 0482 lows: 59-2252. A party against whom a judgment or decree has
 0483 been rendered in proceedings to determine the persons entitled
 0484 to the real property of a decedent, without other service than
 0485 publication in a newspaper, may at any time within one year
 0486 after the date of the judgment or decree have ~~the same it~~ opened
 0487 or set aside and be let in to defend. Before such judgment or
 0488 decree ~~shall be~~ is opened or set aside, the respondent shall: (1)
 0489 Give notice to the adverse party of ~~his or her~~ *the respondent's*

or under the terms