

CHAPTER 73  
HOUSE BILL No. 2555

AN ACT concerning probate; amending K.S.A. 59-2239 and 59-2246 and K.S.A. 2003 Supp. 59-605 and repealing the existing sections.

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

Section 1. K.S.A. 2003 Supp. 59-605 is hereby amended to read as follows: 59-605. Any provision in a will ~~or trust~~, written or prepared for another person, that gives the writer or preparer or the writer's or preparer's parent, children, issue, sibling or spouse any devise or bequest is invalid unless:

(a) The writer or preparer is related to the testator ~~or grantor~~ by blood ~~or~~, marriage ~~or adoption~~ and ~~such provision that gives such the~~ devise or bequest ~~does not give the writer or preparer or the writer's or preparer's~~ parent, child, issue, sibling or spouse ~~is not~~ more than the writer or preparer or the writer's or preparer's parent, ~~child~~ children, issue, sibling or spouse would receive under the laws of intestate succession, *if the property passed in that manner*; or

(b) it affirmatively appears that the testator ~~or grantor~~ had read or knew the ~~content~~ contents of the will ~~or trust~~ and had independent legal advice with reference thereto. As used in this section, "children" and "issue" shall have the same meaning as provided in K.S.A. 59-501, and amendments thereto.

Sec. 2. K.S.A. 59-2239 is hereby amended to read as follows: 59-2239. (1) All demands, including demands of the state, against a decedent's estate, whether due or to become due, whether absolute or contingent, including any demand arising from or out of any statutory liability of decedent or on account of or arising from any liability as surety, guarantor or indemnitor, and including the individual demands of executors and administrators, ~~not exhibited as required by this act within four months after the date of the first published notice to creditors as herein provided~~, shall be forever barred from payment *unless the demand is presented within the later of: (a) four months from the date of first publication of notice under K.S.A. 59-2236, and amendments thereto; or (b) if the identity of the creditor is known or reasonably ascertainable, 30 days after actual notice was given*, except that the provisions of the testator's will requiring the payment of a demand exhibited later shall control. No creditor shall have any claim against or lien upon the property of a decedent other than liens existing at the date of the decedent's death, unless a petition is filed for the probate of the decedent's will pursuant to K.S.A. 59-2220 and amendments thereto or for the administration of the decedent's estate pursuant to K.S.A. 59-2219 and amendments thereto within six months after the death of the decedent and such creditor has exhibited the creditor's demand in the manner and within the time prescribed by this section, except as otherwise provided by this section.

(2) Nothing in this section shall affect or prevent the enforcement of a claim arising out of tort against the personal representative of a decedent within the period of the statute of limitations provided for an action on such claim. For the purpose of enforcing such claims, the estate of the decedent may be opened or reopened, a special administrator appointed, and suit filed against the administrator within the period of the statute of limitations for such action. Any recovery by the claimant in such action shall not affect the distribution of the assets of the estate of the decedent unless a claim was filed in the district court within the time allowed for filing claims against the estate under subsection (1) or an action commenced as provided in subsection (2) of K.S.A. 59-2238 and amendments thereto. The action may be filed in any court of competent jurisdiction and the rules of pleading and procedure in the action shall be the same as apply in civil actions. Any such special administration shall be closed and the special administrator promptly discharged when the statute of limitations for filing such actions has expired and no action has been filed or upon conclusion of any action filed. All court costs incurred in a proceeding under this subsection shall be taxed to the petitioner.

Sec. 3. K.S.A. 59-2246 is hereby amended to read as follows: 59-2246. A petition for partial distribution may be heard without notice, or the court may require notice to be given ~~pursuant to K.S.A. 59-2209~~.

When such notice is required or given, a decree of partial distribution shall be final as to the persons entitled to such distribution and as to their respective proportions of the whole estate, unless such decree includes only specific legacies: ~~Provided, That~~. Where any person entitled to receive a distributive share of any partial distribution of an estate hereunder is the defendant in a garnishment action or proceeding wherein the executor or administrator of the estate is the garnishee, ~~said~~ *such* person's distributive share shall be subject to the order of garnishment served upon the executor or administrator, and no property or funds of the estate shall be delivered or paid over to ~~said~~ *such* person until further order of the court from which the order of garnishment was issued.

Sec. 4. K.S.A. 59-2239 and 59-2246 and K.S.A. 2003 Supp. 59-605 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 14, 2004.

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