

SENATE BILL No. 48

By Committee on Judiciary

1-24

1 AN ACT concerning probate; relating to payment of claims; filing of
2 wills; order in which assets are appropriated; amending K.S.A. 59-103
3 and 59-1405 and K.S.A. 2010 Supp. 59-618a and repealing the
4 existing sections.
5

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

7 Section 1. K.S.A. 59-103 is hereby amended to read as follows: 59-
8 103. (a) Chapter 59 of the Kansas Statutes Annotated may be used:

9 (1) To admit last wills and testaments to probate.

10 (2) To grant and revoke letters testamentary and of administration.

11 (3) To direct and control the official acts of executors and
12 administrators, to settle their accounts, and to order the distribution of
13 estates.

14 (4) To administer partnership estates as provided in this act.

15 (5) To determine the heirs, devisees, and legatees of decedents.

16 (6) To appoint and remove guardians and conservators for minors,
17 voluntary conservatees and incapacitated persons, to make all necessary
18 orders relating to their estates, to direct and control the official acts of
19 such guardians and conservators and to settle their accounts.

20 (7) To supervise the administration of trusts and powers created by
21 wills admitted to probate, and trusts and powers created by written
22 instruments other than by wills in favor of persons subject to
23 conservatorship; to appoint and remove trustees for such trusts, to make
24 all necessary orders relating to such trust estates, to direct and control the
25 official acts of such trustees, and to settle their accounts.

26 (8) To appoint and remove trustees of estates of convicts imprisoned
27 in a correctional institution under sentence of imprisonment for life, to
28 make all necessary orders relating to their estates, to direct and control
29 the official acts of such trustees, and to settle their accounts.

30 (9) To hold hearings respecting mentally ill persons, and to order
31 their referral for treatment.

32 (10) *To determine the validity and payment of claims against*
33 *decedent's estates and revocable trusts after the settlor's death.*

34 (b) Every petition to commence an action pursuant to chapter 59
35 shall state, immediately below the clause showing the name of the court,
36 parties and case docket number, the following: "Petition pursuant to

1 chapter 59 of the Kansas Statutes Annotated."

2 Sec. 2. K.S.A. 2010 Supp. 59-618a is hereby amended to read as
3 follows: 59-618a. (a) Any person possessing a decedent's will may file in
4 the district court of the county of the decedent's last residence the
5 decedent's will and an affidavit which complies with subsection (b) ~~if the~~
6 ~~decedent's probate estate contains no known real or personal property or~~
7 ~~the value of the known real and personal property in the decedent's~~
8 ~~probate estate is less than the total of all known demands enumerated in~~
9 ~~K.S.A. 59-1301 and amendments thereto.~~

10 (b) An affidavit filed pursuant to this section shall state: (1) The
11 name, residence address and date and place of death of the decedent; (2)
12 the names, addresses and relationships of all the decedent's heirs, legatees
13 and devisees which are known to the affiant after a diligent search and
14 inquiry; (3) the name and address of any trustee of any trust established
15 under the will; ~~(4) the property left by the decedent and its approximate~~
16 ~~valuation; (5) the approximate amount and nature of any demands~~
17 ~~enumerated in K.S.A. 59-1301 and amendments thereto which were~~
18 ~~outstanding against the decedent's estate upon the decedent's death; (6)~~
19 ~~(4) that the will is being filed with the district court for the purpose of~~
20 ~~preserving it for record in the event that probate proceedings are later~~
21 ~~required instituted; and (7) (5) that a copy of the affidavit and will has~~
22 ~~been mailed to each heir, legatee and devisee named in the affidavit.~~

23 (c) Any will filed pursuant to this section within a period of six
24 months after the death of the testator may be admitted to probate after
25 such six-month period.

26 Sec. 3. K.S.A. 59-1405 is hereby amended to read as follows: 59-
27 1405. ~~The property of a decedent, Except as provided in K.S.A. 59-401~~
28 ~~and , 59-403 and 59-6a215, and amendments thereto, the property of a~~
29 ~~decedent shall be liable for the payment of the decedent's debts and other~~
30 ~~lawful demands against the estate. To the extent such property was~~
31 ~~exempt from the claims of the decedent's creditors under applicable law,~~
32 ~~immediately prior to the decedent's death, such property, as well as any~~
33 ~~proceeds thereof, the estate receives by reason of the decedent's death,~~
34 ~~and whether or not commingled after death, shall remain exempt from the~~
35 ~~claims of the decedent's creditors following the decedent's death. When a~~
36 ~~will designates the property to be appropriated for the payment of debts~~
37 ~~or other items, it shall be applied to such purpose. Unless the will~~
38 ~~provides otherwise for the payment thereof, or unless the court shall~~
39 ~~otherwise determine pursuant to K.S.A. 59-1410, and amendments~~
40 ~~thereto, the property of the testator, in the decedent's probate estate~~
41 ~~which is properly subject to the payment of debts and or other items, shall~~
42 ~~be applied to that purpose appropriated in the following order:~~

43 (1) Personal property not disposed of by will;

- 1 (2) real estate not disposed of by will;
- 2 (3) personal property bequeathed to the residuary legatee;
- 3 (4) real estate devised to the residuary devisee;
- 4 (5) property not specifically bequeathed or devised;
- 5 (6) property specifically bequeathed or devised.

6 Demonstrative legacies shall be classed as specific legacies to the
7 extent of the payment thereof from the fund or property out of which
8 payment is to be made, and as general legacies upon failure or
9 insufficiency of the fund or property out of which payment was to be
10 made to the extent of such insufficiency. The property of each class shall
11 be exhausted before resorting to that of the next class; and all of one class
12 shall contribute ratably if all the property of that class is not required for
13 the payment of such debts or other items.

14 Sec. 4. K.S.A. 59-103 and 59-1405 and K.S.A. 2010 Supp. 59-618a
15 are hereby repealed.

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