

AMENDED IN ASSEMBLY APRIL 30, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 355

Introduced by Assembly Member Ammiano

February 19, 2009

An act to amend Section 12590 of, and to add Chapter 3.5 (commencing with Section 12577) to Part 13 of Division 7 of, the Probate Code, relating to decedent's estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 355, as amended, Ammiano. Decedent's estates: sister state personal representatives.

(1) Existing law provides a procedure by which a sister state personal representative of a nondomiciliary decedent may, without petitioning for an ancillary probate administration, use an affidavit procedure to collect personal property of the decedent, provided that the value of the estate is under \$100,000, except as specified.

This bill would create a procedure by which a sister state personal representative of a nondomiciliary decedent is permitted to use an affidavit procedure to collect personal property of a decedent when the value of the estate is in excess of \$100,000, *the decedent does not own real property in California, and the sister state personal representative satisfies certain notice requirements*. The bill would specify the form of affidavit, to be made under penalty of perjury. By changing the definition of the crime of perjury, this bill would impose a state-mandated local program. The bill would require that the sister state personal representative provide relevant evidence of ownership. The bill would provide, upon satisfying the requirements of the procedure, that the sister state personal representative may compel the

holder of the property at issue to deliver it, and would provide for an award of attorney's fees in an action to enforce this right if the court finds that the person holding the property acted unreasonably. The bill would provide that a property holder who surrenders property pursuant to this process is released from liability, as specified. The bill would prohibit the use of this procedure if an administration of the decedent's estate is pending, and would provide that the payment or delivery of property pursuant to its provisions would not preclude later proceedings. The bill would specify how property is to be restored to the decedent's estate if proceedings are later commenced. The bill would specify that its provisions do not apply to transfer of real property. *The bill would permit a public administrator who has possession of a decedent's property to refuse to deliver it if payment of specified costs and fees has not first been made. The bill would provide that a public administrator who receives an affidavit as prescribed by these provisions does not have any obligation to administer the decedent's estate or to petition for the administration of the estate.*

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3.5 (commencing with Section 12577)
2 is added to Part 13 of Division 7 of the Probate Code, to read:

3

4 CHAPTER 3.5. COLLECTION OF PERSONAL PROPERTY OF LARGER
5 ESTATES BY SISTER STATE PERSONAL REPRESENTATIVE WITHOUT
6 ANCILLARY ADMINISTRATION

7

8 12577. If the value of a nondomiciliary decedent's property in
9 this state exceeds the dollar amount specified in Section 13100,
10 ~~and if 40 if 120 days have elapsed since the death of the decedent~~
11 *publication of a notice to creditors as described in Section 12578,*
12 *if the decedent did not own real property in California, and if the*
13 *other requirements of this chapter are met, a sister state personal*

representative may, without petitioning for ancillary administration, use the procedure described in this chapter to collect or have transferred personal property of the decedent. For purposes of this chapter, personal property includes money, tangible personal property, evidences of a debt, obligation, interest, right, security, or chose in action.

12578. (a) To collect or have transferred personal property under this chapter, *a sister state personal representative shall cause publication of a notice to creditors as described in paragraph (4), shall give notice of the decedent's death as described in paragraph (5), and shall conduct a diligent search for real property owned in California by the decedent and conclude, to the best of his or her knowledge and belief, that the decedent did not own property in California. The sister state personal representative shall then furnish an affidavit or a declaration made under penalty of perjury—shall be furnished* to the holder of the decedent's property stating all of the following:

(1) The decedent's name.

(2) The date and place of the decedent's death.

(3) "At least ~~40~~ 120 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration."

(4) "At least 120 days prior to the date of this affidavit or declaration, affiant or declarant has caused to be published in a newspaper of general circulation in the city where the property sought under this affidavit or declaration is located a notice to creditors substantially similar in form to that described in Section 9052. Time and manner of publication was governed by the provisions of Section 8121 and a copy of this notice, together with an affidavit of publication for it, is attached to this affidavit or declaration."

(5) "At least 120 days prior to the date of this affidavit or declaration, affiant or declarant has given notice of decedent's death and the administration of decedent's estate by the sister state representative to all parties entitled to notice under Section 9202."

~~(4)~~

(6) "No proceeding, or an application or petition for a proceeding, is now being, or has been, conducted in California for administration of the decedent's estate."

1 (7) “Affiant or declarant has made diligent search and hereby
2 affirms or declares under penalty of perjury that to the best of
3 affiant’s or declarant’s knowledge and belief, decedent did not
4 own real property in the state of California.”

5 (5)

6 (8) A description of the property of the decedent that is to be
7 paid, transferred, or delivered to the affiant or declarant.

8 (6)

9 (9) “The affiant or declarant is the duly-appointed personal
10 representative of the decedent in the state where the decedent was
11 domiciled.”

12 (7)

13 (10) “No other person has a superior right to the interest of the
14 decedent in the described property.”

15 (8)

16 (11) “The affiant or declarant requests that the described
17 property be paid, delivered, or transferred to the affiant or
18 declarant.”

19 (9)

20 (12) “The affiant or declarant affirms or declares under penalty
21 of perjury under the laws of the State of California that the
22 foregoing is true and correct.”

23 (b) If more than one personal representative executes the
24 affidavit or declaration under this section, the statements required
25 by subdivision (a) shall be modified as appropriate.

26 (c) If an item of property to be transferred under this chapter is
27 a debt or other obligation secured by a lien on real property and
28 the instrument creating the lien has been recorded in the office of
29 the county recorder of the county where the real property is located,
30 the affidavit or declaration shall satisfy the requirements both of
31 this section and of Section 13106.5.

32 (d) A certified copy of the decedent’s death certificate shall be
33 attached to the affidavit or declaration.

34 (e) A certified copy of the affiant’s or declarant’s letters
35 testamentary, letters of administration, or the equivalent document
36 in the state where the decedent was domiciled shall be attached to
37 the affidavit or declaration. The certified copy shall be certified
38 within 60 days of the presentation to the holder of the property.

39 12579. (a) If the decedent had evidence of ownership of the
40 property described in the affidavit or declaration and the holder

1 of the property would have had the right to require presentation
2 of the evidence of ownership before the duty of the holder to pay,
3 deliver, or transfer the property to the decedent would have arisen,
4 the evidence of ownership, if available, shall be presented with
5 the affidavit or declaration to the holder of the decedent's property.

6 (b) If the evidence of ownership is not presented to the holder
7 pursuant to subdivision (a), the holder may require, as a condition
8 for the payment, delivery, or transfer of the property, that the
9 person presenting the affidavit or declaration provide the holder
10 with a bond or undertaking in a reasonable amount determined by
11 the holder to be sufficient to indemnify the holder against all
12 liability, claims, demands, loss, damages, costs, and expenses that
13 the holder may incur or suffer by reason of the payment, delivery,
14 or transfer of the property. Nothing in this subdivision precludes
15 the holder and the person presenting the affidavit or declaration
16 from dispensing with the requirement that a bond or undertaking
17 be provided and instead entering into an agreement satisfactory to
18 the holder concerning the duty of the person presenting the affidavit
19 or declaration to indemnify the holder.

20 12580. (a) If the requirements of Sections 12577 to 12579,
21 inclusive, are satisfied:

22 (1) The sister state personal representative is entitled to have
23 the property described in the affidavit or declaration paid, delivered,
24 or transferred to him or her.

25 (2) A transfer agent of a security described in the affidavit or
26 declaration shall change the registered ownership on the books of
27 the corporation from the decedent to the sister state personal
28 representative.

29 (b) If the holder of the decedent's property refuses to pay,
30 deliver, or transfer any personal property or evidence of it to the
31 sister state personal representative within a reasonable time, the
32 sister state personal representative may recover the property or
33 compel its payment, delivery, or transfer in an action brought for
34 that purpose against the holder of the property. If an action is
35 brought against the holder under this section, the court shall award
36 reasonable attorney's fees to the person or persons bringing the
37 action if the court finds that the holder of the decedent's property
38 acted unreasonably in refusing to pay, deliver, or transfer the
39 property to them as required by subdivision (a).

1 12581. If the requirements of Sections 12577 to 12579,
2 inclusive, are satisfied:

3 (a) Receipt by the holder of the decedent's property of the
4 affidavit or declaration constitutes sufficient acquittance for the
5 payment of money, delivery of property, or changing registered
6 ownership of property pursuant to this chapter and discharges the
7 holder from any further liability with respect to the money or
8 property. The holder may rely in good faith on the statements in
9 the affidavit or declaration and has no duty to inquire into the truth
10 of any statement in the affidavit or declaration.

11 (b) The holder of the decedent's property is not liable for any
12 taxes due to this state by reason of paying money, delivering
13 property, or changing registered ownership of property pursuant
14 to this chapter.

15 12582. Where the money or property claimed in an affidavit
16 or declaration executed under this chapter is the subject of a
17 pending action or proceeding in which the decedent was a party,
18 the sister state personal representative of the decedent, without
19 procuring letters of administration or awaiting probate of the will,
20 shall be substituted as a party in place of the decedent by making
21 a motion under Article 3 (commencing with Section 377.30) of
22 Chapter 4 of Title 2 of Part 2 of the Code of Civil Procedure. The
23 sister state personal representative of the decedent shall file the
24 affidavit or declaration with the court when the motion is made.
25 For the purpose of Article 3 (commencing with Section 377.30)
26 of Chapter 4 of Title 2 of Part 2 of the Code of Civil Procedure, a
27 sister state personal representative of the decedent who complies
28 with this chapter shall be considered as a successor in interest of
29 the decedent.

30 12583. (a) The procedure provided by this chapter may be
31 used only if no proceeding for the administration of the decedent's
32 estate is pending or has been conducted in this state.

33 (b) Payment, delivery, or transfer of a decedent's property
34 pursuant to this chapter does not preclude later proceedings for
35 administration of the decedent's estate.

36 12584. (a) Subject to the provisions of this section, if
37 proceedings for the administration of the decedent's estate are
38 commenced in this state, and the personal representative later
39 requests that the property be restored to the estate, the sister state

1 personal representative to whom payment, delivery, or transfer of
2 the decedent's property is made under this chapter is liable for:

3 (1) The restitution of the property to the estate if the sister state
4 personal representative still has the property, together with the net
5 income the sister state personal representative received from the
6 property and, if the sister state personal representative encumbered
7 the property after it was delivered or transferred to the sister state
8 personal representative, the amount necessary to satisfy the balance
9 of the encumbrance as of the date the property is restored to the
10 estate.

11 (2) The restitution to the estate of the fair market value of the
12 property if the sister state personal representative no longer has
13 the property, together with the net income the sister state personal
14 representative received from the property and interest on the fair
15 market value of the property from the date of disposition at the
16 rate payable on a money judgment. For the purposes of this
17 subdivision, the "fair market value of the property" is the fair
18 market value, determined as of the time of the disposition of the
19 property, of the property paid, delivered, or transferred to the sister
20 state personal representative under this chapter, less any liens and
21 encumbrances on the property at that time.

22 (b) If any person fraudulently secures the payment, delivery, or
23 transfer of the decedent's property under this chapter, that person
24 is liable under this section for restitution to the decedent's estate
25 of three times the fair market value of the property. For the
26 purposes of this subdivision, the "fair market value of the property"
27 is the fair market value, determined as of the time the person liable
28 under this subdivision presents the affidavit or declaration under
29 this chapter, of the property paid, delivered, or transferred to that
30 person under this chapter, less the amount of any liens and
31 encumbrances on the property at that time.

32 (c) The property and amount required to be restored to the estate
33 under this section shall be reduced by:

34 (1) Any property or amount paid by the sister state personnel
35 representative to satisfy unsecured debts of decedent as provided
36 in Section 12585.

37 (2) Administrative expenses paid or distributions made in good
38 faith and pursuant to the law of the sister state.

39 (d) An action to enforce the liability under this section may be
40 brought only by the personal representative of the estate of the

1 decedent. In an action to enforce the liability under this section,
2 the court's judgment may enforce the liability only to the extent
3 necessary to protect the interests of the heirs, devisees, and
4 creditors of the decedent.

5 (e) An action to enforce the liability under this section is forever
6 barred three years after presentation of the affidavit or declaration
7 under this chapter to the holder of the decedent's property, or three
8 years after the discovery of the fraud, whichever is later. The
9 three-year period specified in this subdivision is not tolled for any
10 reason.

11 (f) In the case of a nondomiciliary decedent, restitution under
12 this section shall be made to the estate in an ancillary
13 administration proceeding.

14 12585. A sister state personal representative to whom payment,
15 delivery, or transfer of the decedent's property is made under this
16 chapter is liable, to the extent provided in Section 12590, for the
17 unsecured debts of the decedent. Any such debt may be enforced
18 against the sister state personal representative in the same manner
19 as it could have been enforced against the decedent if the decedent
20 had not died. In any action based upon the debt, the sister state
21 personal representative may assert any defenses, cross-complaints,
22 or setoffs that would have been available to the decedent if the
23 decedent had not died. Nothing in this section permits enforcement
24 of a claim that is barred under Part 4 (commencing with Section
25 9000) of Division 7. Section 366.2 of the Code of Civil Procedure
26 applies in an action under this section.

27 12586. (a) A public administrator who has taken possession
28 or control of property of a decedent under Article 1 (commencing
29 with Section 7600) of Chapter 4 of Part 1 of Division 7 may refuse
30 to pay money or deliver property pursuant to this chapter if
31 payment of the costs and fees described in Section 7604 has not
32 first been made or adequately assured to the satisfaction of the
33 public administrator.

34 (b) A coroner who has property found upon the body of a
35 decedent, or who has taken charge of property of the decedent
36 pursuant to Section 27491.3 of the Government Code, may refuse
37 to pay or deliver the property pursuant to this chapter if payment
38 of the reasonable costs of holding or safeguarding the property *or*
39 *of appropriate disposition of the decedent's remains* has not first
40 been made or adequately assured to the satisfaction of the coroner.

1 (c) *Upon receipt of the affidavit or declaration described herein,*
2 *the public administrator identified in Section 7620 shall not have*
3 *any obligation to administer the decedent's estate or to petition*
4 *for the administration of the estate.*

5 12587. The procedure provided in this chapter may not be used
6 to obtain possession or the transfer of real property.

7 12588. The procedure provided in this chapter is in addition
8 to and supplemental to any other procedure for collecting money
9 due to a decedent, receiving tangible personal property of a
10 decedent, or having evidence of ownership of property of a
11 decedent transferred. Nothing in this chapter restricts or limits the
12 release of tangible personal property of a decedent pursuant to any
13 other provision of law.

14 SEC. 2. Section 12590 of the Probate Code is amended to read:

15 12590. A sister state personal representative or foreign nation
16 personal representative submits personally in a representative
17 capacity to the jurisdiction of the courts of this state in any
18 proceeding relating to the estate by any of the following actions:

19 (a) Filing a petition for ancillary administration.

20 (b) Receiving money or other personal property pursuant to
21 Chapter 3 (commencing with Section 12570) or Chapter 3.5
22 (commencing with Section 12577). Jurisdiction under this
23 subdivision is limited to the amount of money and the value of
24 personal property received.

25 (c) Doing any act in this state as a personal representative that
26 would have given this state jurisdiction over the personal
27 representative as an individual.

28 SEC. 3. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.