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 introduced, 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 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.

(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:

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

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

12577. If the value of a nondomiciliary decedent's property in this state exceeds the dollar amount specified in Section 13100, and if 40 days have elapsed since the death of the decedent, 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, 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 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) "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."

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

(6) "The affiant or declarant is the duly-appointed personal representative of the decedent in the state where the decedent was domiciled."

(7) "No other person has a superior right to the interest of the decedent in the described property."

(8) "The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant."

(9) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

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

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

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

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

12579. (a) If the decedent had evidence of ownership of the property described in the affidavit or declaration and the holder of the property would have had the right to require presentation of the evidence of ownership before the duty of the holder to pay, deliver, or transfer the property to the decedent would have arisen, the evidence of ownership, if available, shall be presented with the affidavit or declaration to the holder of the decedent's property.

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

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

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

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

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

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

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

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

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

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

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

12584. (a) Subject to the provisions of this section, if proceedings for the administration of the decedent's estate are commenced in this state, and the personal representative later requests that the property be restored to the estate, the sister state personal representative to whom payment, delivery, or transfer of the decedent's property is made under this chapter is liable for:

(1) The restitution of the property to the estate if the sister state personal representative still has the property, together with the net income the sister state personal representative received from the

property and, if the sister state personal representative encumbered the property after it was delivered or transferred to the sister state personal representative, the amount necessary to satisfy the balance of the encumbrance as of the date the property is restored to the estate.

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

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

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

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

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

(d) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent. In an action to enforce the liability under this section, the court's judgment may enforce the liability only to the extent necessary to protect the interests of the heirs, devisees, and creditors of the decedent.

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

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

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

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

(b) A coroner who has property found upon the body of a decedent, or who has taken charge of property of the decedent pursuant to Section 27491.3 of the Government Code, may refuse to pay or deliver the property pursuant to this chapter if payment of the reasonable costs of holding or safeguarding the property has not first been made or adequately assured to the satisfaction of the coroner.

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

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

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

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

(a) Filing a petition for ancillary administration.

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

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

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

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