

CHAPTER 252.

AN ACT to create 324.31 of the statutes, relating to ancillary administration of decedents' and wards' estates and to make uniform the law relating thereto.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 324.31 of the statutes is created to read:

324.31 UNIFORM ANCILLARY ADMINISTRATION OF ESTATES ACT. (1)

DEFINITIONS. As used in this section:

(a) "Representative" means an executor, administrator, testamentary trustee, guardian or other fiduciary of the estate of a decedent or a ward duly appointed by a court and qualified. It includes any corporation so appointed, regardless of whether the corporation is eligible to act under the law of this state. This section does not change the powers or duties of a testamentary trustee under the nonstatutory law or under the terms of a trust.

(b) "Foreign representative" means any representative who has been appointed by the court of another jurisdiction in which the decedent was domiciled at the time of his death, or in which the ward is domiciled, and who has not also been appointed by a court of this state.

(c) "Local representative" means any representative appointed as ancillary representative by a court of this state who has not been appointed by the domiciliary court.

(d) "Local and foreign representative" means any representative appointed by both the domiciliary court and by a court of this state.

(2) APPLICATION FOR ANCILLARY LETTERS AND NOTICE THEREOF. (a) *Qualifications of and preference for foreign representative.* Any foreign representative upon the filing of an authenticated copy of the domiciliary letters with the probate court may be granted ancillary letters in this state notwithstanding that the representative is a nonresident of this state or is a foreign corporation. If the foreign representative is a foreign corporation it need not qualify under any other law of this state to authorize it to act as local and foreign representative in the particular estate if it complies with the provisions of subsections (4) and (5). If application is made for the issuance of ancillary letters to the foreign representative, the court shall give preference in appointment to the foreign representative unless the court finds that it will not be for the best interests of the estate or the decedent shall have otherwise directed.

(b) *Intervention upon application.* When application is made for issuance of ancillary letters any interested person may intervene and pray for the appointment of any person who is eligible under this section or the law of this state.

(c) *Notice to foreign representative.* When application is made for issuance of ancillary letters to any person other than the foreign representative, the applicant shall send notice of the application by registered mail to the foreign representative if the latter's name and address are known and to the court which appointed him if the court is known. These notices shall be mailed upon filing the application if the necessary facts are then known, or as soon thereafter as the facts are known. If notices are not given prior to the appointment of the local representative, he shall give similar notices of his appointment as soon as the necessary facts are known to him. Notice by ordinary mail is sufficient if it is impossible to send the notice by registered mail. Notice under this paragraph is not jurisdictional.

(3) DENIAL OF ANCILLARY LETTERS. The court may deny the application for ancillary letters if it appears that the estate may be settled conveniently without ancillary administration. Such denial is without prejudice to any subsequent application if it later appears that ancillary administration should be had.

(4) BOND. No nonresident shall be granted ancillary letters unless he gives an administration bond.

(5) AGENT TO ACCEPT SERVICE OF PROCESS. No nonresident shall be granted ancillary letters and no person shall be granted leave to remove assets under subsection (7), until he files in the court an irrevocable power of attorney constituting the clerk of the court his agent to accept and be subject to service of process or of notice in any action or proceeding relating to the administration of the estate. The clerk shall forthwith forward to the representative at his last known address any process or notice so received, by registered mail requesting a return receipt signed by addressee only. Forwarding by ordinary mail is sufficient if when tendered at a United States post office an envelope containing such notice addressed to such representative, as aforesaid, is refused registration.

(6) **SUBSTITUTION OF FOREIGN FOR LOCAL REPRESENTATIVE.** (a) *Application and procedure.* If any other person has been appointed local representative, the foreign representative, not later than 14 days after the mailing of notice to him under subsection (2), unless this period is extended by the court because the foreign representative resides outside continental United States or in Alaska, or for other cause which the court deems adequate, may apply for revocation of the appointment and for grant of ancillary letters to himself. Ten days' written notice of hearing shall be given to the local representative. If the court finds that it is for the best interests of the estate, it may grant the application and direct the local representative to deliver all the assets, documents, books and papers pertaining to the estate in his possession and make a full report of his administration to the local and foreign representative as soon as the letters are issued and he is qualified. The local representative shall also account to the court. The hearing on the account may be forthwith or upon such notice as the court directs. Upon compliance with the court's directions, the local representative shall be discharged.

(b) *Effect of substitution.* Upon qualification, the local and foreign representative shall be substituted in all actions and proceedings brought by or against the local representative in his representative capacity, and shall be entitled to all the rights and be subject to all the burdens arising out of the uncompleted administration in all respects as if it had been continued by the local representative. If the latter has served or been served with any process or notice, no further service shall be necessary nor shall the time within which any steps may or must be taken be changed unless the court in which the action or proceedings are pending so orders.

(7) **REMOVAL OF ASSETS TO DOMICILIARY JURISDICTION.** (a) *Application.* Prior to the final disposition of the ancillary estate under subsection (12) and upon giving the notice provided in section 324.18, the foreign representative or the local and foreign representative may apply for leave to remove all or any part of the assets from this state to the domiciliary jurisdiction for the purpose of administration and distribution.

(b) *Prerequisites to granting application.* Before granting such application, the court shall require compliance with subsection (5) and the filing of a bond by the foreign representative or of an additional bond for the protection of the estate and all interested persons unless the court finds that the bond given under subsection (4) by the local and foreign representative is sufficient.

(c) *Granting application—terms and consequences.* Upon compliance with this subsection, the court shall grant the application upon such conditions as it sees fit unless it finds cause for the denial thereof or for postponement until further facts appear. The granting of the application shall not terminate any proceedings for the administration of property in this state unless the court finds that such proceedings are unnecessary. If the court so finds, it may order the administration in this state closed, subject to reopening within one year for cause.

(8) **EFFECT OF ADJUDICATIONS FOR OR AGAINST REPRESENTATIVES.** A prior adjudication rendered in any jurisdiction for or against any representative of the estate shall be as conclusive as to the local or the local and foreign representative as if he were a party to the adjudication unless it resulted from fraud or collusion of the party representative to the prejudice of the estate. This subsection shall not apply to adjudications in another jurisdiction admitting or refusing to admit a will to probate.

(9) **PAYMENT OF CLAIMS.** No claim against the estate shall be paid in the ancillary administration in this state unless it has been proceeded upon in the manner and within the time required for claims in domiciliary administrations in this state.

(10) **LIABILITY OF LOCAL ASSETS.** All local assets are subject to the payment of all claims, allowances and charges, whether they are established or incurred in this state or elsewhere. For this purpose local assets may be sold in this state and the proceeds forwarded to the representative in the jurisdiction where the claim was established or the charge incurred.

(11) **PAYMENT OF CLAIMS IN CASE OF INSOLVENCY.** (a) *Equality subject to preferences and security.* If the estate either in this state or as a whole is insolvent, it shall be disposed of so that, as far as possible, each creditor whose claim has been allowed, either in this state or elsewhere, shall receive an equal proportion of his claim subject to preferences and priorities and to any security which a creditor has as to particular assets. If a preference or priority is allowed in another jurisdiction but not in this state, the creditor so benefited shall receive dividends from local assets only upon the balance of his claim after deducting the amount of such benefit. The validity and effect of any security held in this state shall be determined by the law of this state but a secured creditor who has not released or surrendered his security shall be entitled only to a propor-

tion computed upon the balance due after the value of all security not exempt from the claims of unsecured creditors is determined and credited upon the claim secured by it.

(b) *Procedure.* In case of insolvency and if local assets permit, each claim allowed in this state shall be paid its proportion, and any balance of assets shall be disposed of in accordance with subsection (12). If local assets are not sufficient to pay all claims allowed in this state the full amount to which they are entitled under this subsection, local assets shall be marshaled so that each claim allowed in this state shall be paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

(12) **TRANSFER OF RESIDUE TO DOMICILIARY REPRESENTATIVE.** Unless the court shall otherwise order, any movable assets remaining on hand after payment of all claims allowed in this state and of all taxes and charges levied or incurred in this state shall be ordered transferred to the representative in the domiciliary jurisdiction. The court may decline to make the order until such representative furnishes security or additional security in the domiciliary jurisdiction, for the proper administration and distribution of the assets to be transferred.

(13) **GENERAL LAW TO APPLY.** Except where special provision is made otherwise, the law and procedure in this state relating generally to administration and representatives apply to ancillary administration and representatives.

(14) **UNIFORMITY OF INTERPRETATION.** This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 2. This act shall take effect January 1, 1952.

Approved May 23, 1951.
