

No. 52, S.]

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CHAPTER 81.

AN ACT to create 268.22 to 268.34 of the statutes, providing for the disposition of property of absentees unheard of for a certain period of years, and making uniform the law with reference thereto.

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

SECTION 1. Sections 268.22 to 268.34 of the statutes are created to read:

268.22 INSURANCE POLICY PROVISIONS INVALID. (1) No provision concerning the effect to be given to evidence of absence or of death in any policy of life or accident insurance or in the charter or by-laws of any mutual or fraternal insurance association hereafter executed or adopted, shall be valid.

(2) When any such policy charter or by-laws hereafter executed or adopted contains a provision requiring a beneficiary to bring suit upon a claim of death within one year or other period after the death of the insured, and the fact of the absence of the insured is relied upon by the beneficiary as evidence of the death, the action may be begun, notwithstanding such provision in the policy or charter or by-laws, at any time within the statutory period of limitation for actions on contracts in writing dating from the date of the giving of written notice of such absence to the insurer, which notice shall be given within one year from the date when the beneficiary last heard of the absent insured. If such notice is not given then the statutory period runs from the time when the absent person was last heard of by the beneficiary.

268.23 RECEIVER MAY BE APPOINTED WHEN. (1) When a person domiciled in this state and having an interest in any form of property disappears and is absent from his place of residence without being heard of after diligent inquiry, upon application for a finding of such disappearance and absence and of the necessity for the appointment of a receiver to the circuit court of the county of the absentee's domicile by any person who would have an interest in said property were said absentee deceased or by an insurer or surety or creditor of such absentee, after notice as provided in section 268.24, and upon good cause being shown, the court may find that he was last heard of as of

a date certain and may appoint a receiver to take charge of his estate. The absentee shall be made a party to said proceeding; and any other person who would have an interest in said property were said absentee deceased, upon direction by the court, may be made a party to said proceeding.

(2) The receiver, upon giving bond to be fixed in amount and with surety to be approved by the court and upon such conditions as will insure the conservation of such property, shall under the direction of said court administer said property as an equity receivership with power (a) to take possession of all property of the absentee wherever situated, (b) to collect all debts due the absentee, (c) to bring and defend suits, (d) to pay insurance premiums, (e) with the approval of the court in each case, to pay all debts due by the absentee, and (f) to pay over the proceeds of such part or all of said property, or the income thereof as may be necessary for the maintenance and support of the absentee's dependents; and if the personal property of said absentee be not sufficient to pay all his debts, and to provide for the maintenance and support of his dependents, the receiver may apply to the court for an order to sell or mortgage so much of the real estate as may be necessary therefor; said sale or mortgage to be reported to, approved, and confirmed by the court and said receiver to be ordered to make deed conveying or mortgaging said real property to the purchaser or lender upon his complying with the terms of sale or mortgage.

(3) Upon the filing of the application referred to in subsection (1), the court may for cause shown appoint a temporary receiver to take charge of the property of the absentee and conserve it pending hearing upon the application. Such temporary receiver shall qualify by giving bond in an amount and with surety to be approved by the court and shall exercise only the powers named by the court. Should a permanent receiver be appointed, the temporary receiver shall turn over all property in his possession, less such as may be necessary to cover his expenses and compensation as allowed by the court, to the permanent receiver, shall file his final account and upon its approval be discharged. Should the application for permanent receiver be denied, the temporary receiver shall restore to those from whom it may have been obtained, all property in his possession, less such only as may be necessary to cover his expenses and compensation as allowed by the court, shall

file his final account and be discharged. Where the application is denied, the expenses of the temporary receivership and the compensation of the temporary receiver may in the discretion of the court be taxed as costs of the proceeding to be paid by the applicant and shall be enforceable by the temporary receiver against him.

268.24 NOTICE. All notices required under sections 268.22 to 268.34 shall be served upon all parties ordered by the court to be served in the manner prescribed by existing statutes or rules, except that in addition thereto the absentee shall be served by publication once a week for 4 successive weeks in a newspaper printed in the English language of general circulation in the county of the absentee's domicile, the last publication to be not less than 10 nor more than 20 days prior to the time set for any hearing. The original notice prescribed in subsection (1) of section 268.23 shall require each person claiming an interest in the property of the absentee to file in court within a time fixed by the court a statement of the nature and extent of such interest.

268.25 SEARCH FOR ABSENTEE. (1) The court, upon application, may direct the receiver to make search for the absentee in any manner which the court may deem advisable, including any or all of the following methods:

(a) By inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the absentee's whereabouts;

(b) By notifying officers of justice and public welfare agencies in appropriate locations of the absentee's disappearance;

(c) By engaging the services of an investigation agency.

(2) The expenses of such search and of the notices provided for in section 268.24 shall be taxed as costs and paid out of the property of the absentee.

268.26 FINAL HEARING AND FINDING. (1) At any time, during the proceedings, upon application to the court and presentation of satisfactory evidence of the absentee's death, the court may make a final finding and decree that the absentee is dead; in which event the decree and a transcript of all of the receivership proceedings shall be certified to the probate court for any administration required by law upon the estate of a decedent, and the receivership court shall proceed no further

except for the purposes set forth in subsections (1) and (3) of section 268.28.

(2) After the lapse of 5 years from the date of the finding provided for in subsection (1) of section 268.23, if the absentee has not appeared, the court may proceed to take further evidence and thereafter make a final finding and enter a decree declaring that all interest of the absentee in his property has ceased and devolved upon others by reason of his failure to appear and make claim.

268.27 CLAIM OF ABSENTEE BARRED. No action shall be brought by an absentee to recover any portion of this property after the final finding and judgment provided for in section 268.26.

268.28 TERMINATION OF RECEIVERSHIP AND DISPOSITION OF THE PROPERTY OF THE ABSENTEE. Upon the entry of any final finding and decree as provided in section 268.26, the court shall proceed to wind up the receivership and terminate the proceedings:

(1) In the case of a finding under subsection (1) of section 268.26 that the absentee is dead:

(a) By satisfying all outstanding debts and charges of the receivership, and

(b) By then certifying the proceedings to the probate court; or

(2) In the case of a finding under subsection (2) of section 268.26:

(a) By satisfying all outstanding debts and charges;

(b) By then deducting for the insurance fund provided in section 268.31 a sum equal to 5 per cent of the total value of the property remaining, including amounts paid to the receivership estate from policies of insurance on the absentee's life,

(c) By distributing the remaining property as provided in section 268.29; and

(3) In both cases by requiring the receiver's account and upon its approval discharging him and his bondsmen and entering a final decree terminating the receivership.

268.29 DISTRIBUTION OF PROPERTY OF ABSENTEE. The property remaining for distribution in accordance with the provisions of paragraph (c) of subsection (2) of section 268.28 shall be distributed among those persons who would be entitled

thereto under the laws of descent and distribution of this state had the absentee died intestate as of the date determined by the court in its final finding and decree; or in case the absentee leaves a document which, had he died, would under the laws of this state be entitled to probate as his will, the distribution shall be according to the terms of that document as of that date. The validity and effect of the distribution of said property shall be determined by the court administering the receivership and shall be final and binding upon all persons including the absentee.

268.30 INSURANCE POLICIES. (1) At the time of the distribution under section 268.29, the court may direct the payment to the beneficiaries of any sums due and unpaid under any policies of insurance upon the life of the absentee, if the claim is uncontested by the insurer.

(2) If the claim is contested, the court shall take jurisdiction of the action and shall submit to a jury, if one be called for, the issue of death of the insured and any other issues arising under the policy.

(3) Where the survival of a named beneficiary is not established, the provisions of sections 268.22 to 268.34 shall apply as if the proceeds of the insurance were a part of the estate of the absentee.

(4) If in any proceeding under subsections (1) and (2) the absentee is not found to be deceased and the policy provides for a surrender value, the beneficiary may request the receiver, acting for the insured, to demand the payment of surrender value. The receiver's receipt for such payment shall be a release to the insurer of all claims under the policy. The receiver shall pay over to the beneficiary (if he survives the insured, otherwise to the estate of the absentee) the sum thus received, reserving only an amount allowed by the court as costs of the proceedings under this section.

(5) Payment by an insurer hereunder shall be in full discharge of all contractual liability. No action shall be brought by an absentee to recover any portion of the proceeds, or any other benefits or values, arising out of contracts of life insurance issued upon his life, after any distribution of such property pursuant to this section.

268.31 ABSENTEE INSURANCE FUND. (1) In each case of termination of receivership as provided in section 268.28,

the court, except in cases where the proceedings have been certified to the probate court under subsection (1) of section 268.26, shall set aside the sum there named and direct its payment by the receiver, to the state treasurer.

(2) The state treasurer shall retain and invest in a separate account the funds thus paid in, cumulating thereto the annual interest.

(3) If at any time thereafter an absentee whose estate has been distributed under a final finding and judgment made as herein provided shall appear and make claim for reimbursement from such fund, the court may in a proceeding by the claimant against the state treasurer order payment to the claimant of such part of the accumulated fund from all sources as in its opinion may be fair and adequate under the circumstances.

(4) If in the lapse of time the accumulated fund increases to an amount actuarially found to be in excess of reasonable requirements, the court may on application by the state treasurer authorize him to reduce it by an amount to be paid into the general fund of the state treasury.

268.32 UNIFORMITY OF INTERPRETATION. Sections 268.22 to 268.34 shall be so construed as to make uniform the law of those states which enact it.

268.33 NAME OF ACT. Sections 268.22 to 268.34 may be cited as the "Uniform Absence as Evidence of Death and Absentee's Property Act".

268.34 TIME OF TAKING EFFECT AND NOT RETROACTIVE. The provisions of sections 268.22 to 268.34 shall not be retroactive and they shall take effect on July 1, 1942.

SECTION 2. This act shall take effect July 1, 1942.

Approved May 7, 1941.