

HOUSE BILL No. 2733

AN ACT concerning presumptive death, relating to persons absent after catastrophic events and disasters; amending K.S.A. 59-2704 and 59-2705 and repealing the existing sections.

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

Section 1. K.S.A. 59-2704 is hereby amended to read as follows: 59-2704. (a) An absentee shall be presumed to be dead for the purposes of this act if:

(1) The absentee shall remain unheard from by those persons most likely to hear from such absentee for a period of not less than five years; and

(2) one or more persons who had a bona fide motive for locating the absentee have conducted a diligent search for the absentee in all places where such absentee's presence could reasonably be expected.

(b) If no such search has been made with reference to an absentee who has been unheard from for more than five years and for whose estate a trustee has been appointed in accordance with this act, the district court may on the court's own motion order the trustee to conduct such search under the direction of the court and pay the reasonable expenses thereof out of the estate.

(c) *Absentees missing as a result of a catastrophic event or disaster shall be presumed dead under section 2, and amendments thereto.*

New Sec. 2. (a) In cases of catastrophic events, disasters, states of emergency or states of war emergency, the death of persons whose bodies could not be found or identified shall be established according to the following procedure:

(1) The governor or president of the United States or both shall have declared a state of emergency or state of war emergency.

(2) An absentee shall be presumed dead immediately after the catastrophic event if:

(A) The absentee's body could not be recovered due to the nature of the catastrophic event; and

(B) evidence presented to a court of proper jurisdiction places the absentee at the site of the catastrophic event on the date and at the time of the event.

(3) Upon a finding of presumptive death, the district court shall order the coroner in the county in which death occurred to prepare a death certificate with the cause of death identified as due to the catastrophic event in accordance with K.S.A. 2001 Supp. 65-2412(c) and 65-2414, and amendments thereto.

(4) Upon receipt of the death certificate the office of vital statistics shall register and make available for issuance certified copies of the death certificate in accordance with K.S.A. 65-2401 *et seq.*

(5) If pertinent new information is received by the court, pursuant to a court order, the presumptive death certificate may be amended in accordance with K.S.A. 65-2422c. In a case where the absentee is found to be alive, the presumptive death certificate shall be rescinded.

(6) The secretary of the department of health and environment may by rule and regulation prescribe forms and procedures to implement the provisions of this act.

(b) For the purposes of this act:

(1) "Catastrophic event" means a disaster that will require massive state or federal assistance, or both, including immediate military involvement.

(2) "Disaster" means any natural, technological or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by the governor or president of the United States or a state of war emergency by the president of the United States.

(3) "State of emergency" means the declaration of the existence of conditions of disaster, catastrophe or extreme peril to the safety of persons or property within the state caused by air or water pollution, fire, flood, storm, epidemic, earthquake, resource shortages or other natural or man-made conditions other than conditions causing a "state of war emergency", which conditions by reasons of their magnitude are or are likely to be beyond the control of the services, personnel, equipment and facilities of any single county or municipality, or both, and requires combined forces of the state to combat.

(4) "State of war emergency" means the condition which exists im-

mediately, with or without a declaration by the governor, whenever this state or nation is attacked by an enemy of the United States or upon receipt by the state of a warning from the federal government indicating an action against persons or society including but not limited to, emergency attack, sabotage, terrorism, civil unrest or other action impairing the orderly administration of government is probable or imminent.

Sec. 3. K.S.A. 59-2705 is hereby amended to read as follows: 59-2705. (a) At any time, upon petition signed by the absentee or on a petition of an attorney-in-fact acting upon an adequate power of attorney granted by the absentee, the court shall *declare the absentee alive and order the state registrar to rescind the presumptive death certificate and* direct the termination of the trust estate and the transfer of all property held thereunder to the absentee or to the designated attorney-in-fact.

(b) Upon the petition of any person interested in the estate of an absentee presumed to be dead, and on proof thereof in addition to all other matters required by law to be proved for the appointment of an administrator or executor, the district court shall proceed to administer the estate of such absentee as if such absentee was known to have died on the date of the filing of ~~said such~~ petition.

(c) Upon petition of any person interested in the estate of any person reported by the United States department of defense as missing in action for over three ~~(3)~~ years, the district court, upon proof that such person has been reported as missing in action for over three ~~(3)~~ years, shall proceed to terminate the trust estate of such absentee in the same manner as the final settlement of a decedent's estate. The district court shall proceed to administer the estate of such absentee as if ~~said such~~ absentee was known to have died on the date of the filing of ~~said such~~ petition, but the district court shall not declare the absentee to be deceased.

(d) *All laws now or hereafter enacted for the administration of estates of known decedents shall be applicable to absentees declared presumptively dead under section 2, and amendments thereto, and subsection (b) of this section, except:*

(1) *No administrator, executor or personal representative of such absentee shall make a final distribution of the assets of such estate until the expiration of three years after the date of presumptive death, provided that assets in the estate of such absentee which are exempt from attachment by creditors, including moneys paid by the United States of such nature and other assets of any such estate which would otherwise be available for the support of the spouse, children and other dependents of such absentee, if such absentee were alive, after allowance for debts and costs of administration, may be paid for the support of the spouse and children and dependents of such absentee upon order of the court until such time as distribution may be made or administration terminated. If the absentee has not appeared after the period of three years the court's finding shall become effective to permit final distribution of such person's estate.*

(2) *Upon final settlement of the absentee's estate the provisions of subsection (e) shall apply.*

~~(d)~~ (e) All laws now or hereafter enacted for the administration of estates of known decedents shall be applicable to the settlement of estates authorized by subsections (b) ~~and (c)~~, (c) and (d) except:

(1) If such absentee should return within five ~~(5)~~ years after entry of the order of final settlement, any order made during such administration shall be subject to being set aside on such absentee's application for good cause shown and filed within three ~~(3)~~ months after such absentee learned, or reasonably could have learned of such order; but setting aside any such order shall not prejudice the rights of any person who has acquired an interest in any property for value, or of any trustee, executor or administrator who has acted in good faith in accordance with the provisions of this act.

(2) No distributee of a share or interest in the estate shall receive or be assigned the same on final settlement until ~~said such~~ distributee shall have filed a bond conditioned that if ~~said such~~ absentee shall return within five ~~(5)~~ years from receipt or assignment of the same and make claim thereto, ~~said such~~ property, or the reasonable value thereof if it has been disposed of, together with the net income therefrom, shall be returned to the absentee.

The court may require sureties on ~~said~~ *such* bond, which sureties shall be subject to the approval of the court. No action shall be brought on such bond more than one ~~(1)~~ year after the absentee learned of such distribution nor in any event more than six ~~(6)~~ years after the date of such distribution.

Sec. 4. K.S.A. 59-2704 and 59-2705 are hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.