

LEGISLATIVE BILL 293

Approved by the Governor March 25, 1985

Introduced by Abboud, 12

AN ACT relating to decedents' estates; to amend sections 30-2314, 30-2317, and 30-2429.01, Revised Statutes Supplement, 1984; to change provisions relating to augmented estates; to change provisions relating to elective shares; to change provisions relating to formal testacy proceedings; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 30-2314, Revised Statutes Supplement, 1984, be amended to read as follows:

30-2314. (a) The augmented estate is the estate, first, reduced by the aggregate amount of funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims and, second, increased by the aggregate amount of the following items:

(1) The value of property transferred by the decedent at any time during marriage to the surviving spouse to or for the benefit of any person other than a bona fide purchaser or the surviving spouse, but only to the extent to which the decedent did not receive adequate and full consideration in money or money's worth for such transfer, if such transfer is a transfer of any of the following types:

(i) Any transfer under which the decedent retained at death the possession or enjoyment of, or right to income from, the property;

(ii) Any transfer to the extent to which the decedent retained at death a power alone or with any other person to revoke such transfer or to consume, invade, or dispose of the principal of the property for his or her own benefit;

(iii) Any transfer whereby the property is held at death by the decedent and any other person or persons with right of survivorship; or

(iv) Any transfer to a donee or donees made by the decedent within three years of death to the extent to which the aggregate amount of such transfers to any one donee in any of such years exceeded three thousand dollars; and

(2) The value of property owned by the surviving spouse at death of the decedent and the value of property transferred by the surviving spouse at any time during

marriage to the decedent to or for the benefit of any person other than the decedent, but exclusive of all income earned thereby before death of the decedent and only to the extent both to which such property would have been included in the augmented estate of the surviving spouse if the surviving spouse had predeceased the decedent and to which such property is derived from the decedent by any means other than testate or intestate succession without adequate and full consideration in money or money's worth, if such property is property of any of the following types:

(i) Any property derived from the decedent including, without limitation to, any beneficial interest of the surviving spouse in a trust created by the decedent during his or her lifetime, any property appointed to the surviving spouse by the exercise by the decedent of a general or a special power of appointment also exercisable in favor of any person other than the surviving spouse, any proceeds, including accidental death benefits, of insurance upon the life of the decedent together with any lump sum immediately payable and the commuted value of any proceeds of annuity contracts under which the decedent was the primary annuitant attributable to the premiums for such insurance paid by the decedent or by his or her employer, his or her partner, a partnership of which he or she was a member, or any of his or her creditors, the commuted value of any amounts or proceeds payable after death of the decedent under public or private pension, disability, compensation, death benefit, or retirement plan, exclusive of the Federal Social Security, railroad retirement, or like system, by reason of service performed or disability incurred by the decedent, and the value of any share of the surviving spouse resulting from rights in community property in Nebraska or elsewhere formerly owned with the decedent; or

(ii) Any property owned by the surviving spouse at death of the decedent or previously transferred by the surviving spouse, except to the extent to which the surviving spouse establishes that such property was derived from any source other than the decedent.

A bona fide purchaser under (1) above is a purchaser for value in good faith and without notice of any adverse claim; and the attachment of stamps to an instrument and their cancellation under sections 76-901 to 76-908 are prima facie evidence that the transferee of the transfer thereby effected is a bona fide purchaser.

(b) Property included in the augmented estate under subsection (a) of this section is valued at the following dates:

(1) For property transferred by the decedent by irrevocable gift during lifetime, at the date, if before death of the decedent, the donee first came into possession or enjoyment of such property;

(2) For property transferred by the surviving

spouse of the decedent, at the date, if before death of the decedent, such transfer became irrevocable; and

(3) For all property not valued at any other date, at the date of death of the decedent.

(c) The augmented estate does not include the following items otherwise ~~includable~~ includable under subsection (a) of this section:

(1) Accident or life insurance proceeds, joint annuity, or pension payable to any person other than the surviving spouse of the decedent; and

(2) Property transferred by the decedent to any person other than the surviving spouse by any bill of sale, conveyance, deed, or gift or by any other means of transfer either by an instrument of transfer joined in by the surviving spouse of the decedent or with the consent to transfer manifested before or after death of the decedent by a writing signed by the surviving spouse of the decedent before, contemporaneously with, or after the transfer; and

(3) Property transferred by or from the decedent to any person by any means other than intestate succession or testamentary disposition if a petition is not filed or delivered under section 30-2317 within nine months of the death of the decedent.

Sec. 2. That section 30-2317, Revised Statutes Supplement, 1984, be amended to read as follows:

30-2317. (a) The surviving spouse may elect to take his or her elective share in the augmented estate by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share in any designated fraction not in excess of one half or, in the absence of any such designation, of one half of the augmented estate within six months after the first publication of notice to creditors for filing claims which arose before the death of the decedent, or within one year nine months after the date of death or within six months after the probate of the decedent's will, whichever time limitation first last expires. Nonprobate transfers described in section 30-2314(a)(1) shall not be included within the augmented estate for the purpose of computing the elective share if the petition is filed later than one year after death. The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(b) The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share.

(c) The surviving spouse may withdraw his or her demand for an elective share at any time before entry of a final determination by the court.

(d) After notice and hearing, the court shall determine the amount of the elective share and shall order

its payment from the assets of the augmented estate or by contribution as appears appropriate under section 30-2319. If it appears that a fund or property included in the augmented estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he or she would have been if relief had been secured against all persons subject to contribution.

(e) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

Sec. 3. That section 30-2429.01, Revised Statutes Supplement, 1984, be amended to read as follows:

30-2429.01. (1) If there is an objection to the probate of a will or if a petition is filed to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, the county court shall continue the originally scheduled hearing for at least fourteen days from the date of the hearing. At any time within fourteen days from the date of the originally scheduled hearing prior to the continued hearing date any party may transfer the proceeding to determine whether the decedent left a valid will to the district court by filing with the county court a notice of transfer, depositing with the clerk of the county court a docket fee in the amount of the filing fee in district court for cases originally commenced in district court, and paying to the clerk of the county court the fee required by section 33-125 for proceedings under the Nebraska Probate Code.

(2) Within ten days of the completion of the requirements of subsection (1) of this section the clerk of the county court shall transmit to the clerk of the district court a certified transcript of the complete record of the matter transferred and the docket fee.

(3) Upon the filing of the transcript in the district court such court shall have jurisdiction over the proceeding on the contest. Within thirty days of the filing of the transcript any party may file additional objections.

(4) The district court may order such additional pleadings as necessary, and shall thereafter determine whether the decedent left a valid will. Trial shall be to a jury unless a jury is waived by all parties who have filed pleadings in the matter.

(5) The final decision and judgment in the matter transferred shall be certified to the county court and proceedings shall be had thereon necessary to carry the

final decision and judgment into execution.

Sec. 4. That original sections 30-2314, 30-2317, and 30-2429.01, Revised Statutes Supplement, 1984, are repealed.