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## HOUSE BILL NO. 339

Offered January 14, 2004

Prefiled January 12, 2004

A BILL to amend and reenact § 64.1-118 of the Code of Virginia, relating to qualification as administrator of intestate estate.

Patron—Pollard

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 64.1-118 of the Code of Virginia is amended and reenacted as follows:**

§ 64.1-118. What clerk or court to appoint administrator of estate; who to be preferred.

A. The court or the clerk who would have jurisdiction as to the probate of a will, if there were a will, shall have the jurisdiction to hear and determine the right of administration of the estate in the case of a person dying intestate. Administration shall be granted as follows:

1. During the first ~~thirty~~30 days following the intestate's death, the clerk may grant administration (i) to a sole distributee or his designee or (ii) in the absence of a sole distributee, to any distributee or his designee who presents written waivers of right to qualify from all other competent distributees.

2. After ~~thirty~~30 days have passed since the intestate's death, the clerk may grant administration to the first distributee, or his designee, who applies therefor, without either waiting for any further period of time, or requiring the consent or waiver of any other distributee; provided, however, that if, during the first ~~thirty~~30 days following the intestate's death, more than one distributee notifies the clerk of an intent to qualify after the ~~thirty~~30-day period has elapsed, the clerk shall not appoint any distributee, or his designee, until the clerk has given all such distributees an opportunity to be heard.

3. After ~~sixty~~60 days have passed since the intestate's death, the clerk may grant administration to one or more of the creditors or to any other person, provided such creditor or other person certifies that he has made diligent search to find an address for any sole distributee and has given not less than ~~thirty~~30 days' notice by certified mail of his intention to apply for administration to the last known address or addresses of the distributee discovered or alternatively, that he has not been able to find any such address. Qualification of a creditor or person other than a distributee is not subject to challenge on account of a failure to have made the certification herein required.

4. The court may appoint administrators under the same conditions as ~~herein~~ provided in this section for the clerk, and when the court determines that it is in the best interests of an intestate's estate, the court may depart ~~therefrom~~ from those conditions at any time and appoint such person as the court, in the exercise of its discretion, deems most appropriate.

B. The court or clerk shall not grant administration to any person unless satisfied that he is suitable and competent to perform the duties of his office. *If the court or clerk has any reason to question the descendancy of a person seeking to qualify as an administrator based on his status as a sole distributee pursuant to subdivision A1 or subdivision A2, the court or clerk may delay the grant of administration by no more than 30 days after application to make additional investigation of the applicant's credentials or to provide a period of public notice of the proposed qualification. No clerk shall be liable for any decision to exercise or not to exercise the authority granted in this subsection.* A person under a disability as defined in § 8.01-2 is not eligible to qualify.

C. If any beneficiary of the estate objects, no husband, wife or parent who has been barred from all interest in the estate because of desertion or abandonment as provided under § 64.1-16.3 is suitable to serve as an administrator of the estate of the deceased spouse or child, ~~as the case may be~~.

INTRODUCED

HB339