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HOUSE BILL NO. 424

House Amendments in [] — February 6, 1996

A BILL to amend and reenact §§ 26-68.1, 64.1-105, 64.1-106 through 64.1-110 and 64.1-112 of the Code of Virginia, relating to presumption of death.

Patrons—Callahan; Senator: Waddell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 26-68.1, 64.1-105, 64.1-106 through 64.1-110 and 64.1-112 of the Code of Virginia are amended and reenacted as follows:

§ 26-68.1. Proceedings to sell property of absentee after failure to locate heirs.

Any duly appointed conservator of the estate of a person the presumption of whose death has been raised by such person going from the Commonwealth and not returning for seven successive years or by such person disappearing for seven successive years without being heard from under § 64.1-105 or of the estate of any such person known to be dead may, after diligent, unsuccessful effort to locate the heirs of such person for not less than two years after such the death shall have become became known or presumed, may petition the court having jurisdiction over lands owned by such the decedent for permission to sell such land. Proceedings under this section shall conform as nearly as may be to proceedings relating to the sale of land owned by an infant. Such The conservator shall account for the proceeds of said the sale, and the net proceeds, after disbursement of costs, shall be conserved in such manner as the court may deem deems proper.

§ 64.1-105. Presumption of death from absence or disappearance; in cause wherein death comes in question.

If Any person who has resided in this Commonwealth either who (i) leaves and, does not return to the Commonwealth for seven years successively and is not heard from or; (ii) disappears for seven years successively and is not heard from; or (iii) disappears in a foreign country, whose body has not been found and who is not known to be alive, upon issuance of a report of presumptive death by the Department of State of the United States [following an investigation by a competent local authority], shall be presumed to be dead. If Any person not residing in this Commonwealth, but owning real or personal property herein, who disappears for seven years successively from the place of his residence outside of this Commonwealth and is not heard from, any such person shall be presumed to be dead.

The presumption created by this section shall arise in any cause wherein his death the person's death is in question, unless proof is offered that he was alive within that the time specified or, in the case of a presumed death in a foreign county, at any time [before or] after the report of presumptive death was issued. Before any final order or decree is entered in any such the cause in favor of the alleged heirs, devisees or legatees of the supposed presumed decedent, or persons claiming by, through or under them, or any of them, proceedings shall be held in conformity with §§ 64.1-107 through 64.1-112; provided that. The person so presumed to be dead, his heirs at law, devisees, next of kin and legatees, may be made parties defendant to proceedings in respect to real or personal property in which he the person presumed dead may have an undivided interest, by order of publication or other process as provided by law. Such The proceedings, whether in the nature of partition, eminent domain or otherwise, shall not be stayed in respect to the division, sale or other disposition of the entire property and. The sections above mentioned shall be applicable only to the portion of the property set apart or to the share of the proceeds to which such person would be entitled.

§ 64.1-106. Distribution of fund when presumption of death not applicable.

If in any chancery cause wherein any estate or fund is to be distributed the interest of any person therein depends upon his having been alive at a particular time and it is not known and cannot be shown by the exercise of reasonable diligence whether such person was alive at that time and the case is one in which the legal presumption of death from absence does not apply, the court may, if it sees no cause to the contrary, enter its decree distributing the estate or fund among those who would be entitled thereto if it were shown that such person above referred to were dead at such particular time; provided, however, that. However, a proper refunding bond shall be given, with condition to account for the estate or fund to any person who may establish title thereto adverse to that of the distributees, or to the heirs, personal representatives or assigns of such person.

No motion shall be made hereunder except after reasonable notice to all parties upon whom service may be had. Nothing in this section shall be construed to affect in any way any requirement of law as to service or publication of process.

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§ 64.1-107. Probate or administration not to be granted by a clerk.

Neither probate of a will of a person presumed to be dead on account of absence from his last domicile in this Commonwealth for seven years or more, nor administration upon the estate of such person shall in any case be granted by a clerk.

§ 64.1-108. Probate or administration before court; notice of application.

Whenever a will of any person ~~supposed~~ *presumed* to be dead on account of absence for seven years or more from the place of his last domicile in this Commonwealth shall be ~~is~~ offered for probate, or whenever letters of administration on the estate of any person ~~so supposed~~ *presumed* to be dead shall be ~~are~~ applied for, the court having jurisdiction if such person were dead, if satisfied that the will ~~so offered for probate~~ should be probated or that the applicant would be entitled to letters of administration were the ~~supposed~~ *presumed* decedent in fact dead, shall cause to be advertised in a newspaper published in the county or city once a week for four successive weeks the fact of the offer or application, together with notice that on a certain day, which shall be at least two weeks after the advertisement, the court ~~or judge~~ will hear evidence concerning the alleged absence of the ~~supposed~~ *presumed* decedent and the circumstances and duration thereof.

§ 64.1-109. Application for order when probate or administration unnecessary.

Whenever any person ~~shall claim claims~~, either as widow or heir at law or otherwise, any property of a person ~~supposed~~ *presumed* to be dead on account of absence for seven years or more from the place of his last domicile and there shall be ~~is~~ no will or ~~no~~ necessity for a grant of letters of administration, ~~such person~~ *he* may apply to the court, which would have jurisdiction for probate or for granting letters of administration, ~~or the judge thereof in vacation~~, to have the fact of such descent established and ~~thereupon the court shall~~. If satisfied that the person so claiming would be so entitled were the ~~supposed~~ *presumed* decedent in fact dead, ~~the court~~ shall cause notice of such application to be published as provided above in respect to offer of a will for probate or application for letters of administration in § 64.1-108.

§ 64.1-110. Hearing application; evidence receivable; further publication.

At the hearing, ~~which shall be either in term or vacation~~, the court ~~or judge~~ shall hear such legal evidence as may then be offered for the purpose of ascertaining whether or not the presumption of death is made out ~~and~~. If satisfied that the legal presumption of death is made out, the court ~~or judge~~ shall so order. If the evidence ~~show~~ *shows* the length of absence of ~~supposed~~ *a presumed* decedent to be ~~more than seven years~~, but less than twenty years, the court ~~or judge~~ shall forthwith cause notice of the order to be inserted once a week for two successive weeks in a newspaper published in the county or city and also, when practicable, in a newspaper published at or near the place where the ~~supposed~~ *presumed* decedent had his residence when last heard from. ~~Such~~ *The* notice shall require the ~~supposed~~ *presumed* decedent, if alive, or any person for him, to produce to the court, ~~or the judge thereof in vacation~~, within twelve weeks from the date of its last insertion, satisfactory evidence of his continuance in life. If there ~~be is~~ not in the county or city a newspaper in the county or city in which the publication required by this section and §§ 64.1-108 and 64.1-109 may be had, the same may be published in such newspaper having general circulation therein as the court ~~or judge~~ shall order.

§ 64.1-112. Distribution of estate; refunding bond; investment.

Before any distribution of the proceeds of the estate of ~~such supposed~~ *a presumed* decedent shall be ~~is~~ made and before the sale of any real or personal property passing in kind by persons claiming the same as heirs at law or devisees, the persons entitled to receive such proceeds or such property in kind shall give a refunding bond with surety to be approved by the court ~~or judge~~, in such form as the court ~~or judge~~ shall direct, and with condition that if the ~~supposed~~ *presumed* decedent ~~shall is~~ in fact be alive at that time, they will respectively refund the amounts received by each on demand, with interest thereon; ~~but~~. If the persons entitled to receive the same are unable to give the security aforesaid, ~~then~~ the money shall be invested under an order of the court ~~or judge~~ in such manner as the court ~~or judge~~ may approve, ~~which~~. *The* investment may be changed from time to time as the court ~~or judge~~ may ~~deem~~ *deems* proper. The interest arising from such investment shall be paid annually to the persons appearing to be entitled thereto ~~and such~~. *The* investment shall continue until security is given, as aforesaid, or the court ~~or judge~~, on application, shall ~~order orders~~ it to be paid to the persons appearing to be entitled to it. ~~But~~

If the evidence shows the length of absence of the ~~supposed~~ *presumed* decedent to be more than fifteen years, the court ~~or judge~~ shall not require surety on such refunding bond.