SENATE FILE 1081

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Judiciary 2/4

Senate File 1081
Judiciary—
Shaw, Chairman
Glenn
Coleman

By RODGERS, ANDERSEN, MURRAY and WINKELMAN
(Lipsky, Grassley, Harper, Husak and Ferguson)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to affairs of decedents, missing persons, pro-
2 tected persons, minors, incapacitated persons and certain
3 others and constituting the Uniform Probate Code; consolidat-
4 ing and revising aspects of the law relating to wills and
5 intestacy and the administration and distribution of estates
6 of decedents, missing persons, protected persons, minors,
7 incapacitated persons and certain others; ordering the
8 powers and procedures of the court concerned with the
9 affairs of decedents and certain others; providing for the
10 validity and effect of certain nontestamentary transfers,
11 contracts and deposits which relate to death and appear to
12 have testamentary effect; providing certain procedures to
13 facilitate enforcement of testamentary and other trusts;
14 making uniform the law with respect to decedents and
15 certain others; repealing inconsistent legislation; and
16 providing penalties.
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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ARTICLE I

GENERAL PROVISIONS, DEFINITIONS AND

PROBATE JURISDICTION OF COURT

PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section 1101. NEW SECTION. SHORT TITLE. This Act shall be known and may be cited as the Uniform Probate Code.

Sec. 1102. NEW SECTION. PURPOSES; RULE OF CONSTRUCTION.

1. This Act shall be liberally construed and applied to promote its underlying purposes and policies.

2. The underlying purposes and policies of this Act are:

a. To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

b. To discover and make effective the intent of a decedent in distribution of his property;

c. To promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to its successors;

d. To facilitate use and enforcement of certain trusts;

e. To make uniform the law among the various jurisdictions.

Sec. 1103. NEW SECTION. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE. Unless displaced by the particular provisions of this Act, the principles of law and equity supplement its provisions.

Sec. 1104. NEW SECTION. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 1105. NEW SECTION. CONSTRUCTION AGAINST IMPLIED REPEAL. This Act is a general act intended as a unified

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1 coverage of its subject matter and no part of it shall be
2 deemed impliedly repealed by subsequent legislation if it
3 can reasonably be avoided.
4 Sec. 1106. NEW SECTION. EFFECT OF FRAUD AND EVASION.
5 Whenever fraud has been perpetrated in connection with any
6 proceeding or in any statement filed under this Act or if
7 fraud is used to avoid or circumvent the provisions or pur-
8 poses of this Act, any person injured thereby may obtain ap-
9 propriate relief against the perpetrator of the fraud includ-
10 ing restitution from any person other than a bona fide pur-
11 chaser benefiting from the fraud, whether innocent or not.
12 Any proceeding must be commenced within two years after the
13 discovery of the fraud, but no proceeding may be brought
14 against one not a perpetrator of the fraud later than five
15 years after the time of commission of the fraud. This sec-
16 tion has no bearing on remedies relating to fraud practiced
17 on a decedent during his lifetime which affects the succes-
18 sion of his estate.
19 Sec. 1107. NEW SECTION. EVIDENCE AS TO DEATH OR STATUS.
20 In proceedings under this Act the rules of evidence in courts
21 of general jurisdiction including any relating to simultaneous
22 deaths, are applicable unless specifically displaced by the
23 Act. In addition, the following rules relating to determina-
24 tion of death and status are applicable:
25 1. A certified or authenticated copy of a death certifi-
26 cate purporting to be issued by an official or agency of the
27 place where the death purportedly occurred is prima facie
28 proof of the fact, place, date and time of death and the
29 identity of the decedent;
30 2. A certified or authenticated copy of any record or
31 report of a governmental agency, domestic or foreign, that
32 a person is missing, detained, dead, or alive is prima facie
33 evidence of the status and of the dates, circumstances and
34 places disclosed by the record or report;
35 3. A person who is absent for a continuous period of five

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1 years, during which he has not been heard from, and whose
2 absence is not satisfactorily explained after diligent search
3 or inquiry is presumed to be dead. His death is presumed
4 to have occurred at the end of the period unless there is
5 sufficient evidence for determining that death occurred
6 earlier.
7 Sec. 1108. NEW SECTION. ACTS BY HOLDER OF GENERAL POWER.
8 For the purpose of granting consent or approval with regard
9 to the acts or accounts of a personal representative or
10 trustee, including relief from liability or penalty for failure
11 to post bond, to register a trust, or to perform other duties,
12 and for purposes of consenting to modification or termination
13 of a trust or to deviation from its terms, the sole holder
14 or all co-holders of a presently exercisable general power
15 of appointment, including one in the form of a power of
16 amendment or revocation, are deemed to act for beneficiaries
17 to the extent their interests as objects, takers in default,
18 or otherwise are subject to the power.
19 PART 2
20 DEFINITIONS
21 Sec. 1201. NEW SECTION. GENERAL DEFINITIONS. As used
22 in this Act, subject to additional definitions contained in
23 the subsequent Articles which are applicable to specific
24 Articles or Parts, and unless the context otherwise requires:
25 1. "Application" means a written request to the registrar
26 for an order of informal probate or appointment under Part
27 three (3) of Article three (III) of this Act.
28 2. "Beneficiary", as it relates to trust beneficiaries,
29 includes a person who has any present or future interest,
30 vested or contingent, and also includes the owner of an in-
31 terest by assignment or other transfer and as it relates to
32 a charitable trust, includes any person entitled to enforce
33 the trust.
34 3. "Child" includes any individual entitled to take as
35 a child under this Act by intestate succession from the parent

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1 whose relationship is involved and excludes any person who
2 is only a stepchild, a foster child, a grandchild or any more
3 remote descendant.
4 4. "Claims", in respect to estates of decedents and pro-
5 tected persons, includes liabilities of the decedent or pro-
6 tected person whether arising in contract, in tort or other-
7 wise, and liabilities of the estate which arise at or after
8 the death of the decedent or after the appointment of a con-
9 servator, including funeral expenses and expenses of admin-
10 istration. The term does not include estate or inheritance
11 taxes, demands or disputes regarding title of a decedent or
12 protected person to specific assets alleged to be included
13 in the estate.
14 5. "Court" means the Iowa district court setting in pro-
15 bate and includes any Iowa district judge.
16 6. "Conservator" means a person who is appointed by a
17 court to manage the estate of a protected person.
18 7. "Devise", when used as a noun, means a testamentary
19 dispostiion of real or personal property and when used as
20 a verb, means to dispose of real or personal property by will.
21 8. "Devisee" means any person designated in a will to
22 receive a devise. In the case of a devise to an existing
23 trust or trustee, or to a trustee on trust described by will,
24 the trust or trustee is the devisee and the beneficiaries
25 are not devisees.
26 9. "Disability" means cause for a protective order as
27 described by section five thousand four hundred one (5401),
28 subsection one (1), of this Act.
29 10. "Distributee" means any person who has received prop-
30 erty of a decedent from his personal representative other
31 than as a creditor or purchaser. A testamentary trustee is
32 a distributee only to the extent of distributed assets or
33 increment thereto remaining in his hands. A beneficiary of
34 a testamentary trust to whom the trustee has distributed prop-
35 erty received from a personal representative is a distributee

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1 of the personal representative.
2 11. "Estate" means all of the property of the decedent,
3 trust, or other person whose affairs are subject to this Act
4 as originally constituted and as it exists from time to time
5 during administration.
6 12. "Exempt property" means that property of a decedent's
7 estate which is described in section two thousand four hun-
8 dred two (2402) of this Act.
9 13. "Fiduciary" includes personal representative, guardian,
10 conservator and trustee.
11 14. "Foreign personal representative" means a personal
12 representative of another jurisdiction.
13 15. "Formal proceedings" means those conducted before
14 a judge with notice to interested persons.
15 16. "Guardian" means a person who has qualified as a
16 guardian of a minor or incapacitated person pursuant to
17 testamentary or court appointment, but excludes one who is
18 merely a guardian ad litem.
19 17. "Heirs" means those persons, including the surviving
20 spouse, who are entitled under the statutes of intestate
21 succession to the property of a decedent.
22 18. "Incapacitated person" is as defined in section five
23 thousand one hundred one (5101) of this Act.
24 19. "Informal proceedings" means those conducted with-
25 out notice to interested persons by an officer of the court
26 acting as a registrar for probate of a will or appointment
27 of a personal representative.
28 20. "Interested person" includes heirs, devisees, children,
29 spouses, creditors, beneficiaries and any others having a
30 property right in or claim against a trust estate or the
31 estate of a decedent, ward or protected person which may be
32 affected by the proceeding. It also includes persons hav-
33 ing priority for appointment as personal representative, and
34 other fiduciaries representing interested persons. The mean-
35 ing as it relates to particular persons may vary from time

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1 to time and must be determined according to the particular
2 purposes of, and matter involved in, any proceeding.
3 21. "Issue" of a person means all his lineal descendants
4 of all generations, with the relationship of parent and child
5 at each generation being determined by the definitions of
6 child and parent contained in this Act.
7 22. "Lease" includes an oil, gas, or other mineral lease.
8 23. "Letters" includes letters testamentary, letters of
9 guardianship, letters of administration, and letters of con-
10 servatorship.
11 24. "Minor" means a person who is under eighteen years
12 of age.
13 25. "Mortgage" means any conveyance, agreement or arrange-
14 ment in which property is used as security.
15 26. "Nonresident decedent" means a decedent who was
16 domiciled in another jurisdiction at the time of his death.
17 27. "Organization" includes a corporation, government
18 or governmental subdivision or agency, business trust, estate,
19 trust, partnership or association two or more persons having
20 a joint or common interest, or any other legal entity.
21 28. "Parent" includes any person entitled to take, or
22 who would be entitled to take if the child died without a
23 will, as a parent under this Act by intestate succession from
24 the child whose relationship is in question and excludes any
25 person who is only a stepparent, foster parent, or grand-
26 parent.
27 29. "Person" means an individual, a corporation, an or-
28 ganization, or other legal entity.
29 30. "Personal representative" includes executor, admin-
30 istrator, successor personal representative, special admin-
31 istrator, and persons who perform substantially the same
32 function under the law governing their status. "General
33 personal representative" excludes special administrator.
34 31. "Petition" means a written request to the court for
35 an order after notice.

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1 32. "Proceeding" includes action at law and suit in equity.
2 33. "Property" includes both real and personal property
3 or any interest therein and means anything that may be the
4 subject of ownership.
5 34. "Protected person" is as defined in section five
6 thousand one hundred one (5101) of this Act.
7 35. "Protective proceeding" is as defined in section five
8 thousand one hundred one (5101) of this Act.
9 36. "Registrar" refers to the official of the court
10 designated to perform the functions of registrar as provided
11 in section one thousand three hundred seven (1307) of this
12 Act.
13 37. "Security" includes any note, stock, treasury stock,
14 bond, debenture, evidence of indebtedness, certificate of
15 interest or participation in an oil, gas or mining title or
16 lease or in payments out of production under such a title
17 or lease, collateral trust certificate, transferable share,
18 voting trust certificate or, in general, any interest or
19 instrument commonly known as a security, or any certificate
20 of interest or participation, any temporary or interim
21 certificate, receipt or certificate of deposit for, or any
22 warrant or right to subscribe to or purchase, any of the
23 foregoing.
24 38. "Settlement", in reference to a decedent's estate,
25 includes the full process of administration, distribution
26 and closing.
27 39. "Special administrator" means a personal representa-
28 tive as described by sections three thousand six hundred
29 fourteen (3614) through three thousand six hundred eighteen
30 (3618) of this Act.
31 40. "State" includes any state of the United States, the
32 District of Columbia, the Commonwealth of Puerto Rico, and
33 any territory or possession subject to the legislative
34 authority of the United States.
35 41. "Successor personal representative" means a personal

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1 representative, other than a special administrator, who is
2 appointed to succeed a previously appointed personal repre-
3 sentative.
4 42. "Successors" means those persons, other than creditors,
5 who are entitled to property of a decedent under his will
6 or this Act.
7 43. "Supervised administration" refers to the proceed-
8 ings described in Article three (III), Part five (5) of this
9 Act.
10 44. "Testacy proceeding" means a proceeding to establish
11 a will or determine intestacy.
12 45. "Trust" includes any express trust, private or chari-
13 table, with additions thereto, wherever and however created.
14 It also includes a trust created or determined by judgment
15 or decree under which the trust is to be be administered in
16 the manner of an express trust. "Trust" excludes other con-
17 structive trusts, and it excludes resulting trusts, conser-
18 vatorships, personal representatives, trust accounts as de-
19 fined in Article six (VI) of this Act, custodial arrange-
20 ments pursuant to (each state should list its legislation,
21 including that relating to gifts to minors, dealing with
22 special custodial situations), business trusts providing for
23 certificates to be issued to beneficiaries, common trust
24 funds, voting trusts, security arrangements, liquidation
25 trusts, and trusts for the primary purpose of paying debts,
26 dividends, interest, salaries, wages, profits, pensions, or
27 employee benefits of any kind, and any arrangement under which
28 a person is nominee or escrowee for another.
29 46. "Trustee" includes an original, additional, or suc-
30 cessor trustee, whether or not appointed or confirmed by
31 court.
32 47. "Ward" is as defined in section five thousand one
33 hundred one (5101) of this Act.
34 48. "Will" includes codicil and any testamentary instru-
35 ment which merely appoints an executor or revokes or revises

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1 another will.

2 PART 3

3 SCOPE, JURISDICTION AND COURTS

4 Sec. 1301. NEW SECTION. TERRITORIAL APPLICATION. Ex-
5 cept as otherwise provided in this Act, this Act applies to
6 the affairs and estates of decedents, missing persons, and
7 persons to be protected, domiciled in this state; the prop-
8 erty of nonresidents located in this state or property com-
9 ing into the control of a fiduciary who is subject to the
10 laws of this state; incapacitated persons and minors in this
11 state; survivorship and related accounts in this state; and
12 trusts subject to administration in this state.

13 Sec. 1302. NEW SECTION. SUBJECT MATTER JURISDICTION.

14 1. To the full extent permitted by the constitution, the
15 court has jurisdiction over all subject matter relating to
16 estates of decedents, including construction of wills and
17 determination of heirs and successors of decedents, and es-
18 tates of protected persons; protection of minors and in-
19 capacitated persons; and trusts.

20 2. The court has full power to make orders, judgments
21 and decrees and take all other action necessary and proper
22 to administer justice in the matters which come before it.

23 Sec. 1303. NEW SECTION. VENUE; MULTIPLE PROCEEDINGS;
24 TRANSFER.

25 1. Where a proceeding under this Act could be maintained
26 in more than one place in this state, the court in which the
27 proceeding is first commenced has the exclusive right to
28 proceed.

29 2. If proceedings concerning the same estate, protected
30 person, ward, or trust are commenced in more than one court
31 of this state, the court in which the proceeding was first
32 commenced shall continue to hear the matter, and the other
33 courts shall hold the matter in abeyance until the question
34 of venue is decided, and if the ruling court determines that
35 venue is properly in another court, it shall transfer the

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1 proceeding to the other court.
2 3. If a court finds that in the interest of justice a
3 proceeding or a file should be located in another court of
4 this state, the court making the finding may transfer the
5 proceeding or file to the other court.
6 Sec. 1304. NEW SECTION. PRACTICE IN COURT. Unless
7 specifically provided to the contrary in this Act or unless
8 inconsistent with its provisions, the rules of civil pro-
9 cedure including the rules concerning vacation of orders and
10 appellate review govern formal proceedings under this Act.
11 Sec. 1305. NEW SECTION. RECORDS AND CERTIFIED COPIES.
12 The clerk of court shall keep a record for each decedent,
13 ward, protected person or trust involved in any document which
14 may be filed with the court under this Act, including petitions
15 and applications, demands for notices or bonds, trust
16 registrations, and of any orders or responses relating thereto
17 by the registrar or court, and establish and maintain a system
18 for indexing, filing or recording which is sufficient to
19 enable users of the records to obtain adequate information.
20 Upon payment of the fees required by law the clerk must issue
21 certified copies of any probated wills, letters issued to
22 personal representatives, or any other record or paper filed
23 or recorded. Certificates relating to probated wills must
24 indicate whether the decedent was domiciled in this state
25 and whether the probate was formal or informal. Certificates
26 relating to letters must show the date of appointment.
27 Sec. 1306. NEW SECTION. JURY TRIAL.
28 1. If duly demanded, a party is entitled to trial by jury
29 in a formal testacy proceeding and any proceeding in which
30 any controverted question of fact arises as to which any party
31 has a constitutional right to trial by jury.
32 2. If there is no right to trial by jury under subsec-
33 tion one (1) of this section or the right is waived, the court
34 in its discretion may call a jury to decide any issue of fact,
35 in which case the verdict is advisory only.

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1 Sec. 1307. NEW SECTION. REGISTRAR; POWERS. The acts
2 and orders which this Act specifies as performable by the
3 registrar may be performed either by a judge of the court
4 or by a person, including the clerk, designated by the court
5 by a written order filed and recorded in the office of the
6 court.
7 Sec. 1308. NEW SECTION. APPEALS. Appellate review,
8 including the right to appellate review, interlocutory ap-
9 peal, provisions as to time, manner, notice, appeal bond,
10 stays, scope of review, record on appeal, briefs, arguments
11 and power of the appellate court, is governed by the rules
12 applicable to the appeals to the supreme court in equity cases
13 from the district court except that in proceedings where jury
14 trial has been had as a matter of right, the rules applicable
15 to the scope of review in jury cases apply.
16 Sec. 1309. NEW SECTION. QUALIFICATIONS OF JUDGE. A judge
17 of the court must have the same qualifications as a judge
18 of the district court.
19 Sec. 1310. NEW SECTION. OATH OR AFFIRMATION ON FILED
20 DOCUMENTS. Except as otherwise specifically provided in this
21 Act or by rule, every document filed with the court under
22 this Act including applications, petitions, and demands for
23 notice, shall be deemed to include an oath, affirmation, or
24 statement to the effect that its representations are true
25 as far as the person executing or filing it knows or is
26 informed, and penalties for perjury may follow deliberate
27 falsification therein.
28 PART 4
29 NOTICE, PARTIES AND REPRESENTATION IN ESTATE
30 LITIGATION AND OTHER MATTERS
31 Sec. 1401. NEW SECTION. NOTICE; METHOD AND TIME OF GIVING.
32 1. If notice of a hearing on any petition is required
33 and except for specific notice requirements as otherwise pro-
34 vided, the petitioner shall cause notice of the time and place
35 of hearing of any petition to be given to any interested per-

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1 son or his attorney if he has appeared by attorney or requested
2 that notice be sent to his attorney. Notice shall be given:
3 a. By mailing a copy thereof at least fourteen days be-
4 fore the time set for the hearing by certified, registered
5 or ordinary first class mail addressed to the person being
6 notified at the post-office address given in his demand for
7 notice, if any, or at his office or place of residence, if
8 known;
9 b. By delivering a copy thereof to the person being no-
10 tified personally at least fourteen days before the time set
11 for the hearing; or
12 c. If the address, or identity of any person is not known
13 and cannot be ascertained with reasonable diligence, by pub-
14 lishing at least once a week for three consecutive weeks,
15 a copy thereof in a newspaper having general circulation in
16 the county where the hearing is to be held, the last publi-
17 cation of which is to be at least ten days before the time
18 set for the hearing.
19 2. The court for good cause shown may provide for a dif-
20 ferent method or time of giving notice for any hearing.
21 3. Proof of the giving of notice shall be made on or be-
22 fore the hearing and filed in the proceeding.
23 Sec. 1402. NEW SECTION. NOTICE; WAIVER. A person, in-
24 cluding a guardian ad litem, conservator, or other fiduciary,
25 may waive notice by a writing signed by him or his attorney
26 and filed in the proceeding.
27 Sec. 1403. NEW SECTION. PLEADINGS; WHEN PARTIES BOUND
28 BY OTHERS; NOTICE. In judicial proceedings involving trusts
29 or estates of decedents, minors, protected persons, or inca-
30 pacitated persons, and in judicially supervised settlements,
31 the following apply:
32 1. Interests to be affected shall be described in plead-
33 ings which give reasonable information to owners by name or
34 class, by reference to the instrument creating the interests,
35 or in other appropriate manner.

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1 2. Persons are bound by orders binding others in the fol-
2 lowing cases:
3 a. Orders binding the sole holder or all co-holders of
4 a power of revocation or a presently exercisable general power
5 of appointment, including one in the form of a power of amend-
6 ment, bind other persons to the extent their interests as
7 objects, takers in default, or otherwise are subject to the
8 power.
9 b. To the extent there is no conflict of interest between
10 them or among persons represented, orders binding a conserva-
11 tor bind the person whose estate he controls; orders binding
12 a guardian bind the ward if no conservator of his estate has
13 been appointed; orders binding a trustee bind beneficiaries
14 of the trust in proceedings to probate a will establishing
15 or adding to a trust, to review the acts or accounts of a
16 prior fiduciary and in proceedings involving creditors or
17 other third parties; and orders binding a personal represen-
18 tative bind persons interested in the undistributed assets
19 of a decedent's estate in actions or proceedings by or against
20 the estate. If there is no conflict of interest and no con-
21 servator or guardian has been appointed, a parent may repre-
22 sent his minor child.
23 c. An unborn or unascertained person who is not other-
24 wise represented is bound by an order to the extent his in-
25 terest is adequately represented by another party having a
26 substantially identical interest in the proceeding.
27 3. Notice is required as follows:
28 a. Notice as prescribed by section one thousand four hun-
29 dred one (1401) of this Act shall be given to every interested
30 person or to one who can bind an interested person as described
31 in subsection two (2), paragraphs a or b of this section.
32 Notice may be given both to a person and to another who may
33 bind him.
34 b. Notice is given to unborn or unascertained persons,
35 who are not represented under subsection two (2), paragraphs

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1 a or b of this section, by giving notice to all known persons
2 whose interests in the proceedings are substantially identi-
3 cal to those of the unborn or unascertained persons.
4 4. At any point in a proceeding, a court may appoint a
5 guardian ad litem to represent the interest of a minor, an
6 incapacitated, unborn, or unascertained person, or a person
7 whose identity or address is unknown, if the court determines
8 that representation of the interest otherwise would be in-
9 adequate. If not precluded by conflict of interests, a guar-
10 dian ad litem may be appointed to represent several persons
11 or interests. The court shall set out its reasons for ap-
12 pointing a guardian ad litem as a part of the record of the
13 proceeding.
14 ARTICLE II
15 INTESTATE SUCCESSION AND WILLS
16 PART 1
17 INTESTATE SUCCESSION
18 Sec. 2101. NEW SECTION. INTESTATE ESTATE. Any part of
19 the estate of a decedent not effectively disposed of by his
20 will passes to his heirs as prescribed in the following
21 sections of this Act.
22 Sec. 2102. NEW SECTION. SHARE OF THE SPOUSE. The
23 intestate share of the surviving spouse is:
24 1. If there is no surviving issue or parent of the dece-
25 dent, the entire intestate estate;
26 2. If there is no surviving issue but the decedent is
27 survived by a parent or parents, the first fifty thousand
28 dollars, plus one-half of the balance of the intestate estate;
29 3. If there are surviving issue all of whom are issue
30 of the surviving spouse also, the first fifty thousand dollars,
31 plus one-half of the balance of the intestate estate;
32 4. If there are surviving issue one or more of whom are
33 not issue of the surviving spouse, one-half of the intestate
34 estate.
35 Sec. 2103. NEW SECTION. SHARE OF HEIRS OTHER THAN

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1 SURVIVING SPOUSE. The part of the intestate estate not passing
2 to the surviving spouse under section two thousand one hun-
3 dred two (2102) of this Act, or the entire intestate estate
4 if there is no surviving spouse, passes as follows:
5 1. To the issue of the decedent; if they are all of the
6 same degree of kinship to the decedent they take equally,
7 but if of unequal degree, then those of more remote degree
8 take by representation;
9 2. If there is no surviving issue, to his parent or parents
10 equally;
11 3. If there is no surviving issue or parent, to the
12 brothers and sisters and the issue of each deceased brother
13 or sister by representation; if there is no surviving brother
14 or sister, the issue of brothers and sisters take equally
15 if they are all of the same degree of kinship to the decedent,
16 but if of unequal degree then those of more remote degree
17 take by representation;
18 4. If there is no surviving issue, parent or issue of
19 a parent, but the decedent is survived by one or more
20 grandparents or issue of grandparents, half of the estate
21 passes to the paternal grandparents if both survive, or to
22 the surviving paternal grandparent, or to the issue of the
23 paternal grandparents if both are deceased, the issue taking
24 equally if they are all of the same degree of kinship to the
25 decedent, but if of unequal degree those of more remote degree
26 take by representation; and the other half passes to the
27 maternal relatives in the same manner; but if there be no
28 surviving grandparent or issue of grandparent on either the
29 paternal or the maternal side, the entire estate passes to
30 the relatives on the other side in the same manner as the
31 half.
32 Sec. 2104. NEW SECTION. REQUIREMENT THAT HEIR SURVIVE
33 DECEDENT FOR 120 HOURS. Any person who fails to survive the
34 decedent by one hundred twenty hours is deemed to have
35 predeceased the decedent for purposes of homestead allowance,

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1 exempt property and intestate succession, and the decedent's
2 heirs are determined accordingly. If the time of death of
3 the decedent or of the person who would otherwise be an heir,
4 or the times of death of both, cannot be determined, and it
5 cannot be established that the person who would otherwise
6 be an heir has survived the decedent by one hundred twenty
7 hours, it is deemed that the person failed to survive for
8 the required period. This section is not to be applied where
9 its application would result in a taking of intestate estate
10 by the state under section two thousand one hundred five
11 (2105) of this Act.
12 Sec. 2105. NEW SECTION. NO TAKER. If there is no taker
13 under the provisions of this Article, the intestate estate
14 passes to the state.
15 Sec. 2106. NEW SECTION. REPRESENTATION. If represen-
16 tation is called for by this Act, the estate is divided into
17 as many shares as there are surviving heirs in the nearest
18 degree of kinship and deceased persons in the same degree
19 who left issue who survive the decedent, each surviving heir
20 in the nearest degree receiving one share and the share of
21 each deceased person in the same degree being divided among
22 his issue in the same manner.
23 Sec. 2107. NEW SECTION. KINDRED OF HALF BLOOD. Rela-
24 tives of the half blood inherit the same share they would
25 inherit if they were of the whole blood.
26 Sec. 2108. NEW SECTION. AFTERBORN HEIRS. Relatives of
27 the decedent conceived before his death but born thereafter
28 inherit as if they had been born in the lifetime of the dece-
29 dent.
30 Sec. 2109. NEW SECTION. MEANING OF CHILD AND RELATED
31 TERMS. If, for purposes of intestate succession, a relation-
32 ship of parent and child must be established to determine
33 succession by, through, or from a person:
34 1. An adopted person is the child of an adopting parent
35 and not of the natural parents except that adoption of a child

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1 by the spouse of a natural parent has no effect on the
2 relationship between the child and that natural parent.
3 2. In cases not covered by subsection one (1) of this
4 section, a person born out of wedlock is a child of the mother.
5 That person is also a child of the father, if:
6 a. The natural parents participated in a marriage ceremony
7 before or after the birth of the child, even though the
8 attempted marriage is void; or
9 b. The paternity is established by an adjudication before
10 the death of the father or is established thereafter by clear
11 and convincing proof, except that the paternity established
12 under this paragraph is ineffective to qualify the father
13 or his kindred to inherit from or through the child unless
14 the father has openly treated the child as his, and has not
15 refused to support the child.
16 Sec. 2110. NEW SECTION. ADVANCEMENTS. If a person dies
17 intestate as to all his estate, property which he gave in
18 his lifetime to an heir is treated as an advancement against
19 the latter's share of the estate only if declared in a con-
20 temporaneous writing by the decedent or acknowledged in writing
21 by the heir to be an advancement. For this purpose the
22 property advanced is valued as of the time the heir came into
23 possession or enjoyment of the property or as of the time
24 of death of the decedent, whichever first occurs. If the
25 recipient of the property fails to survive the decedent, the
26 property is not taken into account in computing the intestate
27 share to be received by the recipient's issue, unless the
28 declaration or acknowledgment provides otherwise.
29 Sec. 2111. NEW SECTION. DEBTS TO DECEDENT. A debt owed
30 to the decedent is not charged against the intestate share
31 of any person except the debtor. If the debtor fails to sur-
32 vive the decedent, the debt is not taken into account in
33 computing the intestate share of the debtor's issue.
34 Sec. 2112. NEW SECTION. ALIENAGE. No person is dis-
35 qualified to take as an heir because he or a person through

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1 whom he claims is or has been an alien.
2 Sec. 2113. NEW SECTION. DOWER AND CURTESY ABOLISHED.
3 The estates of dower and curtesy are abolished.
4 PART 2
5 ELECTIVE SHARE OF SURVIVING SPOUSE
6 Sec. 2201. NEW SECTION. RIGHT TO ELECTIVE SHARE.
7 1. If a married person domiciled in this state dies, the
8 surviving spouse has a right of election to take an elective
9 share of one-third of the augmented estate under the limita-
10 tions and conditions hereinafter stated.
11 2. If a married person not domiciled in this state dies,
12 the right, if any, of the surviving spouse to take an elec-
13 tive share in property in this state is governed by the law
14 of the decedent's domicile at death.
15 Sec. 2202. NEW SECTION. AUGMENTED ESTATE. The augmented
16 estate means the estate reduced by funeral and administration
17 expenses, homestead allowance, family allowances and
18 exemptions, and enforceable claims, to which is added the
19 sum of the following amounts:
20 1. The value of property transferred by the decedent at
21 any time during marriage, to or for the benefit of any per-
22 son other than the surviving spouse, to the extent that the
23 decedent did not receive adequate and full consideration in
24 money or money's worth for the transfer, if the transfer is
25 of any of the following types:
26 a. Any transfer under which the decedent retained at the
27 time of his death the possession or enjoyment of, or right
28 to income from, the property;
29 b. Any transfer to the extent that the decedent retained
30 at the time of his death a power, either alone or in
31 conjunction with any other person, to revoke or to consume,
32 invade or dispose of the principal for his own benefit;
33 c. Any transfer whereby property is held at the time of
34 decedent's death by decedent and another with right of sur-
35 vivorship;

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1 d. Any transfer made within two years of death of the
2 decedent to the extent that the aggregate transfers to any
3 one donee in either of the years exceed three thousand dollars.
4 2. Any transfer is excluded if made with the written
5 consent or joinder of the surviving spouse. Property is
6 valued as of the decedent's death except that property given
7 irrevocably to a donee during lifetime of the decedent is
8 valued as of the date the donee came into possession or
9 enjoyment if that occurs first. Nothing herein shall cause
10 to be included in the augmented estate any life insurance,
11 accident insurance, joint annuity, or pension payable to a
12 person other than the surviving spouse.
13 3. The value of property owned by the surviving spouse
14 at the decedent's death, plus the value of property transferred
15 by the spouse at any time during marriage to any person other
16 than the decedent which would have been includible in the
17 spouse's augmented estate if the surviving spouse had
18 predeceased the decedent, to the extent the owned or
19 transferred property is derived from the decedent by any means
20 other than testate or intestate succession without a full
21 consideration in money or money's worth. For purposes of
22 this subsection:
23 a. Property derived from the decedent includes, but is
24 not limited to, any beneficial interest of the surviving
25 spouse in a trust created by the decedent during his lifetime,
26 any property appointed to the spouse by the decedent's exercise
27 of a general or special power of appointment also exercisable
28 in favor of others than the spouse, any proceeds of insurance,
29 including accidental death benefits, on the life of the
30 decedent attributable to premiums paid by him, any lump sum
31 immediately payable and the commuted value of the proceeds
32 of annuity contracts under which the decedent was the primary
33 annuitant attributable to premiums paid by him, the commuted
34 value of amounts payable after the decedent's death under
35 any public or private pension, disability compensation, death

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1 benefit or retirement plan, exclusive of the Federal Social
2 Security system, by reason of service performed or disabilities
3 incurred by the decedent, and the value of the share of the
4 surviving spouse resulting from rights in community property
5 in this or any other state formerly owned with the decedent.
6 Premiums paid by the decedent's employer, his partner, a
7 partnership of which he was a member, or his creditors, are
8 deemed to have been paid by the decedent.
9 b. Property owned by the spouse at the decedent's death
10 is valued as of the date of death. Property transferred by
11 the spouse is valued at the time the transfer became irrevo-
12 cable, or at the decedent's death, whichever occurred first.
13 Income earned by included property prior to the decedent's
14 death is not treated as property derived from the decedent.
15 c. Property owned by the surviving spouse as of the dece-
16 dent's death, or previously transferred by the surviving
17 spouse, is presumed to have been derived from the decedent
18 except to the extent that the surviving spouse establishes
19 that it was derived from another source.
20 Sec. 2203. NEW SECTION. RIGHT OF ELECTION PERSONAL TO
21 SURVIVING SPOUSE. The right of election of the surviving
22 spouse may be exercised only during his lifetime by him.
23 In the case of a protected person, the right of election may
24 be exercised only by order of the court in which protective
25 proceedings as to his property are pending, after finding
26 that exercise is necessary to provide adequate support for
27 the protected person during his probable life expectancy.
28 Sec. 2204. NEW SECTION. WAIVER OF RIGHT TO ELECT AND
29 OF OTHER RIGHTS. The right of election of a surviving spouse
30 and the rights of the surviving spouse to homestead allowance,
31 exempt property and family allowance, or any of them, may
32 be waived, wholly or partially, before or after marriage,
33 by a written contract, agreement or waiver signed by the party
34 waiving after fair disclosure. Unless it provides to the
35 contrary, a waiver of "all rights", or equivalent language,

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1 in the property or estate of a present or prospective spouse
2 or a complete property settlement entered into after or in
3 anticipation of separation or divorce is a waiver of all
4 rights to elective share, homestead allowance, exempt property
5 and family allowance by each spouse in the property of the
6 other and a renunciation by each of all benefits which would
7 otherwise pass to him from the other by intestate succession
8 or by virtue of the provisions of any will executed before
9 the waiver or property settlement.
10 Sec. 2205. NEW SECTION. PROCEEDING FOR ELECTIVE SHARE;
11 TIME LIMIT.
12 1. The surviving spouse may elect to take his elective
13 share in the augmented net estate by filing in the court and
14 mailing or delivering to the personal representative a petition
15 for the elective share within six months after the publication
16 of notice to creditors for filing claims which arose before
17 the death of the decedent. The court may extend the time
18 for election as it sees fit for cause shown by the surviving
19 spouse before the time for election has expired.
20 2. The surviving spouse shall give notice of the time
21 and place set for hearing to persons interested in the estate
22 and to the distributees and recipients of portions of the
23 augmented net estate whose interests will be adversely affected
24 by the taking of the elective share.
25 3. The surviving spouse may withdraw his demand for an
26 elective share at any time before entry of a final
27 determination by the court.
28 4. After notice and hearing, the court shall determine
29 the amount of the elective share and shall order its payment
30 from the assets of the augmented net estate or by contribution
31 as appears appropriate under section two thousand two hundred
32 seven (2207) of this Act. If it appears that a fund or
33 property included in the augmented net estate has not come
34 into the possession of the personal representative, or has
35 been distributed by the personal representative, the court

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1 nevertheless shall fix the liability of any person who has
2 any interest in the fund or property or who has possession
3 thereof, whether as trustee or otherwise. The proceeding
4 may be maintained against fewer than all persons against whom
5 relief could be sought, but no person is subject to
6 contribution in any greater amount than he would have been
7 if relief had been secured against all persons subject to
8 contribution.
9 5. The order or judgment of the court may be enforced
10 as necessary in suit for contribution or payment in other
11 courts of this state or other jurisdictions.
12 Sec. 2206. NEW SECTION. EFFECT OF ELECTION ON BENEFITS
13 BY WILL OR STATUTE.
14 1. The surviving spouse's election of his elective share
15 does not affect the share of the surviving spouse under the
16 provisions of the decedent's will or intestate succession
17 unless the surviving spouse also expressly renounces in the
18 petition for an elective share the benefit of all or any of
19 the provisions. If any provision is so renounced, the property
20 or other benefit which would otherwise have passed to the
21 surviving spouse thereunder is treated, subject to contribution
22 under section two thousand two hundred seven (2207), subsection
23 two (2) of this Act, as if the surviving spouse had predeceased
24 the testator.
25 2. A surviving spouse is entitled to homestead allowance,
26 exempt property and family allowance whether or not he elects
27 to take an elective share and whether or not he renounces
28 the benefits conferred upon him by the will except that, if
29 it clearly appears from the will that a provision therein
30 made for the surviving spouse was intended to be in lieu of
31 these rights, he is not so entitled if he does not renounce
32 the provision so made for him in the will.
33 Sec. 2207. NEW SECTION. CHARGING SPOUSE WITH GIFTS
34 RECEIVED; LIABILITY OF OTHERS FOR BALANCE OF ELECTIVE SHARE.
35 1. In the proceeding for an elective share, property which

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is part of the augmented estate which passes or has passed to the surviving spouse by testate or intestate succession or other means and which has not been renounced, including that described in section two thousand two hundred two (2202), subsection three (3) of this Act, is applied first to satisfy the elective share and to reduce the amount due from other recipients of portions of the augmented estate.

2. Remaining property of the augmented estate is so applied that liability for the balance of the elective share of the surviving spouse is equitably apportioned among the recipients of the augmented estate in proportion to the value of their interests therein.

3. Only original transferees from, or appointees of, the decedent and their donees, to the extent the donees have the property or its proceeds, are subject to the contribution to make up the elective share of the surviving spouse. A person liable to contribution may choose to give up the property transferred to him or to pay its value as of the time it is considered in computing the augmented estate.

PART 3

SPOUSE AND CHILDREN UNPROVIDED FOR IN WILLS

Sec. 2301. NEW SECTION. OMITTED SPOUSE.

1. If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

2. In satisfying a share provided by this section, the devises made by the will abate as provided in section three thousand nine hundred two (3902) of this Act.

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1 Sec. 2302. NEW SECTION. PRETERMITTED CHILDREN.
2 1. If a testator fails to provide in his will for any
3 of his children born or adopted after the execution of his
4 will, the omitted child receives a share in the estate equal
5 in value to that which he would have received if the testa-
6 tor had died intestate unless:
7 a. It appears from the will that the omission was in-
8 tentional;
9 b. When the will was executed the testator had one or
10 more children and devised substantially all his estate to
11 the other parent of the omitted child; or
12 c. The testator provided for the child by transfer out-
13 side the will and the intent that the transfer be in lieu
14 of a testamentary provision is shown by statements of the
15 testator or from the amount of the transfer or other evi-
16 dence.
17 2. If at the time of execution of the will the testator
18 fails to provide in his will for a living child solely be-
19 cause he believes the child to be dead, the child receives
20 a share in the estate equal in value to that which he would
21 have received if the testator had died intestate.
22 3. In satisfying a share provided by this section, the
23 devises made by the will abate as provided in section three
24 thousand nine hundred two (3902) of this Act.
25 PART 4
26 EXEMPT PROPERTY AND ALLOWANCES
27 Sec. 2401. NEW SECTION. HOMESTEAD ALLOWANCE. A sur-
28 viving spouse of a decedent who was domiciled in this state
29 is entitled to a homestead allowance of five thousand dol-
30 lars. If there is no surviving spouse, each minor child and
31 each dependent child of the decedent is entitled to a home-
32 stead allowance amounting to five thousand dollars divided
33 by the number of minor and dependent children of the dece-
34 dent. The homestead allowance is exempt from and has priority
35 over all claims against the estate. Homestead allowance is

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1 in addition to any share passing to the surviving spouse or
2 minor or dependent child by the will of the decedent unless
3 otherwise provided, by intestate succession or by way of
4 elective share.
5 Sec. 2402. NEW SECTION. EXEMPT PROPERTY. In addition
6 to the homestead allowance, the surviving spouse of a de-
7 cedent who was domiciled in this state is entitled from the
8 estate to value not exceeding three thousand five hundred
9 dollars in excess of any security interests therein in house-
10 hold furniture, automobiles, furnishings, appliances and per-
11 sonal effects. If there is no surviving spouse, children
12 of the decedent are entitled jointly to the same value. If
13 encumbered chattels are selected and if the value in excess
14 of security interests, plus that of other exempt property,
15 is less than three thousand five hundred dollars, or if there
16 is not three thousand five hundred dollars worth of exempt
17 property in the estate, the spouse or children are entitled
18 to other assets of the estate, if any, to the extent neces-
19 sary to make up the three thousand five hundred dollar value.
20 Rights to exempt property and assets needed to make up a de-
21 ficiency of exempt property have priority over all claims
22 against the estate, except that the right to any assets to
23 make up a deficiency of exempt property shall abate as neces-
24 sary to permit prior payment of homestead allowance and family
25 allowance. These rights are in addition to any benefit or
26 share passing to the surviving spouse or children by the will
27 of the decedent unless otherwise provided, by intestate suc-
28 cession, or by way of elective share.
29 Sec. 2403. NEW SECTION. FAMILY ALLOWANCE. In addition
30 to the right to homestead allowance and exempt property, if
31 the decedent was domiciled in this state, the surviving spouse
32 and minor children whom the decedent was obligated to sup-
33 port and children who were in fact being supported by him
34 are entitled to a reasonable allowance in money out of the
35 estate for their maintenance during the period of administra-

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1 tion, which allowance may not continue for longer than one
2 year if the estate is inadequate to discharge allowed claims.
3 The allowance may be paid as a lump sum or in periodic install-
4 ments. It is payable to the surviving spouse, if living,
5 for the use of the surviving spouse and minor and dependent
6 children; otherwise to the children, or persons having their
7 care and custody; but in case any minor child or dependent
8 child is not living with the surviving spouse, the allowance
9 may be made partially to the child or his guardian or other
10 person having his care and custody, and partially to the
11 spouse, as their needs may appear. The family allowance is
12 exempt from and has priority over all claims but not over
13 the homestead allowance.
14 The family allowance is not chargeable against any bene-
15 fit or share passing to the surviving spouse or children by
16 the will of the decedent unless otherwise provided, by in-
17 testate succession, or by way of elective share. The death
18 of any person entitled to family allowance terminates his
19 right to allowances not yet paid.
20 Sec. 2404. NEW SECTION. SOURCE, DETERMINATION AND DOCU-
21 MENTATION. If the estate is otherwise sufficient, property
22 specifically devised is not used to satisfy rights to home-
23 stead and exempt property. Subject to this restriction, the
24 surviving spouse, the guardians of the minor children, or
25 children who are adults may select property of the estate
26 as homestead allowance and exempt property. The personal
27 representative may make these selections if the surviving
28 spouse, the children or the guardians of the minor children
29 are unable or fail to do so within a reasonable time or if
30 there are no guardians of the minor children. The personal
31 representative may execute an instrument or deed of distri-
32 bution to establish the ownership of property taken as home-
33 stead allowance or exempt property. He may determine the
34 family allowance in a lump sum not exceeding six thousand
35 dollars or periodic installments not exceeding five hundred

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1 dollars per month for one year, and may disburse funds of
2 the estate in payment of the family allowance and any part
3 of the homestead allowance payable in cash. The personal
4 representative or any interested person aggrieved by any se-
5 lection, determination, payment, proposed payment, or fail-
6 ure to act under this section may petition the court for ap-
7 propriate relief, which relief may provide a family allowance
8 larger or smaller than that which the personal representative
9 determined or could have determined.

10 PART 5

11 WILLS

12 Sec. 2501. NEW SECTION. WHO MAY MAKE A WILL. Any per-
13 son eighteen or more years of age who is of sound mind may
14 make a will.

15 Sec. 2502. NEW SECTION. EXECUTION. Except as provided
16 for holographic wills, writings within section two thousand
17 five hundred thirteen (2513) of this Act, and wills within
18 section two thousand five hundred six (2506) of this Act,
19 every will shall be in writing signed by the testator or in
20 the testator's name by some other person in the testator's
21 presence and by his direction, and shall be signed by at least
22 two persons each of whom witnessed either the signing or the
23 testator's acknowledgment of the signature or of the will.

24 Sec. 2503 NEW SECTION. HOLOGRAPHIC WILL. A will which
25 does not comply with section two thousand five hundred two
26 (2502) of this Act is valid as a holographic will, whether
27 or not witnessed, if the signature and the material provi-
28 sions are in the handwriting of the testator.

29 Sec. 2504. NEW SECTION. SELF-PROVED WILL. An attested
30 will may at the time of its execution or at any subsequent
31 date be made self-proved, by the acknowledgment thereof by
32 the testator and the affidavits of the witnesses, each made
33 before an officer authorized to administer oaths under the
34 laws of this state, and evidenced by the officer's certifi-
35 cate, under official seal, attached or annexed to the will

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1 in form and content substantially as follows:
2 THE STATE OF _____
3 COUNTY OF _____
4 We, _____, _____, and _____,
5 the testator and the witnesses, respectively, whose names
6 are signed to the attached or foregoing instrument, being
7 first duly sworn, do hereby declare to the undersigned
8 authority that the testator signed and executed the instrument
9 as his last will and that he had signed willingly or directed
10 another to sign for him, and that he executed it as his free
11 and voluntary act for the purposes therein expressed; and
12 that each of the witnesses, in the presence and hearing of
13 the testator, signed the will as witness and that to the best
14 of his knowledge the testator was at that time eighteen or
15 more years of age, of sound mind and under no constraint or
16 undue influence.
17 _____
18 Testator
19 _____
20 Witness
21 _____
22 Witness
23 Subscribed, sworn to and acknowledged before me by _____,
24 the testator, and subscribed and sworn to before me by _____
25 and _____, witnesses, this _____ day of _____,
26 _____.
27 (SEAL) (Signed) _____
28 _____
29 (Official capacity of officer)
30 Sec. 2505. NEW SECTION. WHO MAY WITNESS.
31 1. Any person generally competent to be a witness may
32 act as a witness to a will.
33 2. A will or any provision thereof is not invalid be-
34 cause the will is signed by an interested witness.
35 Sec. 2506. NEW SECTION. CHOICE OF LAW AS TO EXECUTION.

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1 A written will is valid if executed in compliance with sec-
2 tion two thousand five hundred two (2502) or two thousand
3 five hundred three (2503) of this Act or if its execution
4 complies with the law at the time of execution of the place
5 where the will is executed, or of the law of the place where
6 at the time of execution or at the time of death the testa-
7 tor is domiciled, has a place of abode or is a national.
8 Sec. 2507. NEW SECTION. REVOCATION BY WRITING OR BY ACT.
9 A will or any part thereof is revoked:
10 1. By a subsequent will which revokes the prior will or
11 part expressly or by inconsistency; or
12 2. By being burned, torn, canceled, obliterated, or de-
13 stroyed, with the intent and for the purpose of revoking it
14 by the testator or by another person in his presence and by
15 his direction.
16 Sec. 2508. NEW SECTION. REVOCATION BY DIVORCE; NO REVO-
17 CATION BY OTHER CHANGES OF CIRCUMSTANCES. If after executing
18 a will the testator is divorced or his marriage annulled,
19 the divorce or annulment revokes any disposition or appoint-
20 ment of property made by the will to the former spouse, any
21 provision conferring a general or special power of appoint-
22 ment on the former spouse, and any nomination of the former
23 spouse as executor, trustee, conservator, or guardian, un-
24 less the will expressly provides otherwise. Property pre-
25 vented from passing to a former spouse because of revocation
26 by divorce or annulment passes as if the former spouse failed
27 to survive the decedent, and other provisions conferring some
28 power or office on the former spouse are interpreted as if
29 the spouse failed to survive the decedent. If provisions
30 are revoked solely by this section, they are revived by tes-
31 tator's remarriage to the former spouse. For purposes of
32 this section, divorce or annulment means any divorce or an-
33 nulment which would exclude the spouse as a surviving spouse
34 within the meaning of section two thousand eight hundred two
35 (2802), subsection two (2) of this Act. A decree of separa-

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1 tion which does not termninate the status of husband and wife
2 is not a divorce for purposes of this section. No change
3 of circumstances other than as described in this section re-
4 vokes a will.
5 Sec. 2509. NEW SECTION. REVIVAL OF REVOKED WILL.
6 1. If a second will which, had it remained effective at
7 death, would have revoked the first will in whole or in part,
8 is thereafter revoked by acts under section two thousand five
9 hundred seven (2507) of this Act, the first will is revoked
10 in whole or in part unless it is evident from the circum-
11 stances of the revocation of the second will or from testa-
12 tor's contemporary or subsequent declarations that he in-
13 tended the first will to take effect as executed.
14 2. If a second will which, had it remained effective at
15 death, would have revoked the first will in whole or in part,
16 is thereafter revoked by a third will, the first will is re-
17 voked in whole or in part, except to the extent it appears
18 from the terms of the third will that the testator intended
19 the first will to take effect.
20 Sec. 2510. NEW SECTION. INCORPORATION BY REFERENCE.
21 Any writing in existence when a will is executed may be in-
22 corporated by reference if the language of the will mani-
23 fests this intent and describes the writing sufficiently to
24 permit its identification.
25 Sec. 2511. NEW SECTION. TESTAMENTARY ADDITIONS TO TRUSTS.
26 A devise or bequest, the validity of which is determinable
27 by the law of this state, may be made by a will to the trus-
28 tee of a trust established or to be established by the tes-
29 tator or by the testator and some other person or by some
30 other person, including a funded or unfunded life insurance
31 trust, although the trustor has reserved any or all rights
32 of ownership of the insurance contracts, if the trust is
33 identified in the testator's will and its terms are set forth
34 in a written instrument, other than a will, executed before
35 or concurrently with the execution of the testator's will

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1 or in the valid last will of a person who has predeceased
2 the testator, regardless of the existence, size, or character
3 of the corpus of the trust. The devise is not invalid be-
4 cause the trust is amendable or revocable, or because the
5 trust was amended after the execution of the will or after
6 the death of the testator. Unless the testator's will pro-
7 vides otherwise, the property so devised is not deemed to
8 be held under a testamentary trust of the testator but be-
9 comes a part of the trust to which it is given and shall be
10 administered and disposed of in accordance with the provi-
11 sions of the instrument or will setting forth the terms of
12 the trust, including any amendments thereto made before the
13 death of the testator, regardless of whether made before or
14 after the execution of the testator's will, and, if the
15 testator's will so provides, including any amendments to the
16 trust made after the death of the testator. A revocation
17 or termination of the trust before the death of the testator
18 causes the devise to lapse.
19 Sec. 2512. NEW SECTION. EVENTS OF INDEPENDENT SIGNIF-
20 ICANCE. A will may dispose of property by reference to acts
21 and events which have significance apart from their effect
22 upon the dispositions made by the will, whether they occur
23 before or after the execution of the will or before or after
24 the testator's death. The execution or revocation of a will
25 of another person is such an event.
26 Sec. 2513. NEW SECTION. SEPARATE WRITING IDENTIFYING
27 BEQUEST OF TANGIBLE PROPERTY. Whether or not the provisions
28 relating to holographic wills apply, a will may refer to a
29 written statement or list to dispose of items of tangible
30 personal property not otherwise specifically disposed of by
31 the will, other than money, evidences of indebtedness, docu-
32 ments of title, and securities, and property used in trade
33 or business. To be admissible under this section as evi-
34 dence of the intended disposition, the writing must either
35 be in the handwriting of the testator or be signed by him

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1 and must describe the items and the devisees with reasonable
2 certainty. The writing may be referred to as one to be in
3 existence at the time of the testator's death; it may be pre-
4 pared before or after the execution of the will; it may be
5 altered by the testator after its preparation; and it may
6 be a writing which has no significance apart from its ef-
7 fect upon the dispositions made by the will.

8 PART 6

9 RULES OF CONSTRUCTION

10 Sec. 2601. NEW SECTION. REQUIREMENT THAT DEVISEE SUR-
11 VIVE TESTATOR BY ONE HUNDRED TWENTY HOURS. A devisee who
12 does not survive the testator by one hundred twenty hours
13 is treated as if he predeceased the testator, unless the will
14 of decedent contains some language dealing explicitly with
15 simultaneous deaths or deaths in a common disaster, or re-
16 quiring that the devisee survive the testator or survive the
17 testator for a stated period in order to take under the will.
18 Sec. 2602. NEW SECTION. CHOICE OF LAW AS TO MEANING AND
19 EFFECT OF WILLS. The meaning and legal effect of a disposition
20 in a will shall be determined by the local law of a particular
21 state selected by the testator in his instrument unless the
22 application of that law is contrary to the public policy of
23 this state otherwise applicable to the disposition.
24 Sec. 2603. NEW SECTION. RULES OF CONSTRUCTION AND IN-
25 TENTION. The intention of a testator as expressed in his
26 will controls the legal effect of his dispositions. The rules
27 of construction expressed in the succeeding sections of this
28 Part apply unless a contrary intention is indicated by the
29 will.
30 Sec. 2604. NEW SECTION. CONSTRUCTION THAT WILL PASSES
31 ALL PROPERTY; AFTER-ACQUIRED PROPERTY. A will is construed
32 to pass all property which the testator owns at his death
33 including property acquired after the execution of the will.
34 Sec. 2605. NEW SECTION. ANTI-LAPSE; DECEASED DEVISEE;
35 CLASS GIFTS. If a devisee who is a grandparent or a lineal

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1 descendant of a grandparent of the testator is dead at the
2 time of execution of the will, fails to survive the testa-
3 tor, or is treated as if he predeceased the testator, the
4 issue of the deceased devisee who survive the testator by
5 one hundred twenty hours take in place of the deceased de-
6 visee and if they are all of the same degree of kinship to
7 the devisee they take equally, but if of unequal degree then
8 those of more remote degree take by representation. One who
9 would have been a devisee under a class gift if he had sur-
10 vived the testator is treated as a devisee for purposes of
11 this section whether his death occurred before or after the
12 execution of the will.
13 Sec. 2606. NEW SECTION. FAILURE OF TESTAMENTARY PROVI-
14 SION.
15 1. Except as provided in section two thousand six hun-
16 dred five (2605) of this Act if a devise other than a resid-
17 uary devise fails for any reason, it becomes a part of the
18 residue.
19 2. Except as provided in section two thousand six hun-
20 dred five (2605) of this Act if the residue is devised to
21 two or more persons and the share of one of the residuary
22 devisees fails for any reason, his share passes to the other
23 residuary devisee, or to other residuary devisees in propor-
24 tion to their interests in the residue.
25 Sec. 2607. NEW SECTION. CHANGE IN SECURITIES; ACCES-
26 SIONS; NONADEMPTION.
27 1. If the testator intended a specific devise of cer-
28 tain securities rather than the equivalent value thereof,
29 the specific devisee is entitled only to:
30 a. As much of the devised securities as is a part of the
31 estate at time of the testator's death;
32 b. Any additional or other securities of the same entity
33 owned by the testator by reason of action initiated by the
34 entity excluding any acquired by exercise of purchase op-
35 tions;

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1 c. Securities of another entity owned by the testator
2 as a result of a merger, consolidation, reorganization or
3 other similar action initiated by the entity; and
4 d. Any additional securities of the entity owned by the
5 testator as a result of a plan of reinvestment if it is a
6 regulated investment company.
7 2. Distributions prior to death with respect to a spe-
8 cifically devised security not provided for in subsection
9 one (1) of this section are not part of the specific devise.
10 Sec. 2608. NEW SECTION. NONADEMPTION OF SPECIFIC DEVISES
11 IN CERTAIN CASES; SALE BY CONSERVATOR; UNPAID PROCEEDS OF
12 SALE, CONDEMNATION OR INSURANCE.
13 1. If specifically devised property is sold by a con-
14 servator, or if a condemnation award or insurance proceeds
15 are paid to a conservator as a result of condemnation, fire,
16 or casualty, the specific devisee has the right to a general
17 pecuniary devise equal to the net sale price, the condemna-
18 tion award, or the insurance proceeds. This subsection does
19 not apply if subsequent to the sale, condemnation, or casu-
20 alty, it is adjudicated that the disability of the testator
21 had ceased and the testator survives the adjudication by one
22 year. The right of the specific devisee under this subsec-
23 tion is reduced by any right he has under subsection two (2)
24 of this section.
25 2. A specific devisee has the right to the remaining
26 specifically devised property and:
27 a. Any balance of the purchase price, together with any
28 security interest, owing from a purchaser to the testator
29 at death by reason of sale of the property;
30 b. Any amount of a condemnation award for the taking of
31 the property unpaid at death;
32 c. Any proceeds unpaid at death on fire or casualty in-
33 surance on the property; and
34 d. Property owned by testator at his death as a result
35 of foreclosure, or obtained in lieu of foreclosure, of the

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1 security for a specifically devised obligation.
2 Sec. 2609. NEW SECTION. NON-EXONERATION. A specific
3 devise passes subject to any security interest existing at
4 the date of death, without right of exoneration, regardless
5 of a general directive in the will to pay debts.
6 Sec. 2610. NEW SECTION. EXERCISE OF POWER OF APPOINT-
7 MENT. A general residuary clause in a will, or a will mak-
8 ing general disposition of all of the testator's property,
9 does not exercise a power of appointment held by the testa-
10 tor unless specific reference is made to the power or there
11 is some other indication of intention to include the prop-
12 erty subject to the power.
13 Sec. 2611. NEW SECTION. CONSTRUCTION OF GENERIC TERMS
14 TO ACCORD WITH RELATIONSHIPS AS DEFINED FOR INTESTATE
15 SUCCESSION. Halfbloods, adopted persons and persons born
16 out of wedlock are included in class gift terminology and
17 terms of relationship in accordance with rules for determining
18 relationships for purposes of intestate succession, but a
19 person born out of wedlock is not treated as the child of
20 the father unless the person is openly and notoriously so
21 treated by the father.
22 Sec. 2612. NEW SECTION. ADEMPTION BY SATISFACTION.
23 Property which a testator gave in his lifetime to a person
24 is treated as a satisfaction of a devise to that person in
25 whole or in part, only if the will provides for deduction
26 of the lifetime gift, or the testator declares in a contem-
27 poraneous writing that the gift is to be deducted from the
28 devise or is in satisfaction of the devise, or the devisee
29 acknowledges in writing that the gift is in satisfaction.
30 For purpose of partial satisfaction, property given during
31 lifetime is valued as of the time the devisee came into pos-
32 session or enjoyment of the property or as of the time of
33 death of the testator, whichever occurs first.
34 PART 7
35 CONTRACTUAL ARRANGEMENTS RELATING TO DEATH

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1 Sec. 2701. NEW SECTION. CONTRACTS CONCERNING SUCCES-
2 SION. A contract to make a will or devise, or not to revoke
3 a will or devise, or to die intestate, if executed after the
4 effective date of this Act, can be established only by pro-
5 visions of a will stating material provisions of the con-
6 tract; an express reference in a will to a contract and ex-
7 trinsic evidence proving the terms of the contract; or a
8 writing signed by the decedent evidencing the contract. The
9 execution of a joint will or mutual wills does not create
10 a presumption of a contract not to revoke the will or wills.
11 PART 8
12 GENERAL PROVISIONS
13 Sec. 2801. NEW SECTION. RENUNCIATION OF SUCCESSION.
14 1. A person, or his personal representative, who is an
15 heir, devisee, person succeeding to a renounced interest,
16 beneficiary under a testamentary instrument or person desig-
17 nated to take pursuant to a power of appointment exercised
18 by a testamentary instrument may renounce in whole or in part
19 the succession to any property or interest therein by filing
20 a written instrument within the time and at the place
21 hereinafter provided. The instrument shall describe the prop-
22 erty or part thereof or interest therein renounced, be signed
23 by the person renouncing and declare the renunciation and
24 the extent thereof.
25 2. The writing specified in subsection one (1) of this
26 section must be filed within six months after the death of
27 the decedent or the donee of the power, or if the taker of
28 the property is not then finally ascertained not later than
29 six months after the event by which the taker or the inter-
30 est is finally ascertained. The writing must be filed in
31 the court of the county where proceedings concerning the de-
32 cedent's estate are pending, or where they would be pending
33 if commenced. A copy of the writing also shall be mailed
34 to the personal representative of the decedent.
35 3. Unless the decedent or donee of the power has other-

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1 wise indicated by his will, the interest renounced, and any
2 future interest which is to take effect in possession or en-
3 joyment at or after the termination of the interest renounced,
4 passes as if the person renouncing had predeceased the dece-
5 dent, or if the person renouncing is one designated to take
6 pursuant to a power of appointment exercised by a testamen-
7 tary instrument, as if the person renouncing had predeceased
8 the donee of the power. In every case the renunciation re-
9 lates back for all purposes to the date of death of the de-
10 cedent or the donee, as the case may be.
11 4. Any assignment, conveyance, encumbrance, pledge or
12 transfer of property therein or any contract therefor, writ-
13 ten waiver of the right to renounce or any acceptance of prop-
14 erty by an heir, devisee, person succeeding to a renounced
15 interest, beneficiary or person designated to take pursuant
16 to a power of appointment exercised by testamentary instru-
17 ment, or sale or other disposition of property pursuant to
18 judicial process, made before the expiration of the period
19 in which he is permitted to renounce, bars the right to re-
20 nounce as to the property.
21 5. The right to renounce granted by this section exists
22 irrespective of any limitation on the interest of the per-
23 son renouncing in the nature of a spendthrift provision or
24 similar restriction.
25 6. This section does not abridge the right of any per-
26 son to assign, convey, release, or renounce any property
27 arising under any other section of this Act or other statute.
28 7. Any interest in property which exists on the effec-
29 tive date of this section, but which has not then become in-
30 defeasibly fixed both in quality and quantity, or the taker
31 of which has not then become finally ascertained, may be
32 renounced after the effective date of this section as pro-
33 vided herein. An interest which has arisen prior to the
34 effective date of this section in any person other than the
35 person renouncing is not destroyed or diminished by any ac-

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1 tion of the person renouncing taken under this section.
2 Sec. 2802. NEW SECTION. EFFECT OF DIVORCE, ANNULMENT,
3 AND DECREE OF SEPARATION.
4 1. A person who is divorced from the decedent or whose
5 marriage to the decedent has been annulled is not a surviv-
6 ing spouse unless, by virtue of a subsequent marriage, he
7 is married to the decedent at the time of death. A decree
8 of separation which does not terminate the status of husband
9 and wife is not a divorce for purposes of this section.
10 2. For purposes of Parts one (1), two (2), three (3),
11 and four (4) of this Article, a surviving spouse does not
12 include:
13 a. A person who obtains or consents to a final decree
14 or judgment of divorce from the decedent or an annulment of
15 their marriage, which decree or judgment is not recognized
16 as valid in this state, unless they subsequently participate
17 in a marriage ceremony purporting to marry each to the other,
18 or subsequently live together as man and wife;
19 b. A person who, following a decree or judgment of di-
20 vorce or annulment obtained by the decedent, participates
21 in a marriage ceremony with a third person; or
22 c. A person who was a party to a valid proceeding con-
23 cluded by an order purporting to terminate all marital prop-
24 erty rights.
25 Sec. 2803. NEW SECTION. EFFECT OF HOMICIDE ON INTESTATE
26 SUCCESSION, WILLS, JOINT ASSETS, LIFE INSURANCE AND BENE-
27 FICIARY DESIGNATIONS.
28 1. A surviving spouse, heir or devisee who feloniously
29 and intentionally kills the decedent is not entitled to any
30 benefits under the will or under this Article, and the es-
31 tate of decedent passes as if the killer has predeceased the
32 decedent. Property appointed by the will of the decedent
33 to or for the benefit of the killer passes as if the killer
34 had predeceased the decedent.
35 2. Any joint tenant who feloniously and intentionally

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1 kills another joint tenant thereby effects a severance of
2 the interest of the decedent so that the share of the de-
3 cedent passes as his property and the killer has no rights
4 by survivorship. This provision applies to joint tenancies
5 and tenancies by the entirety in real and personal property,
6 joint accounts in banks, savings and loan associations, credit
7 unions and other institutions, and any other form of coowner-
8 ship with survivorship incidents.
9 3. A named beneficiary of a bond, life insurance policy,
10 or other contractual arrangement who feloniously and inten-
11 tionally kills the principal obligee or the person upon whose
12 life the policy is issued is not entitled to any benefit un-
13 der the bond, policy or other contractual arrangement, and
14 it becomes payable as though the killer had predeceased the
15 decedent.
16 4. Any other acquisition of property or interest by the
17 killer shall be treated in accordance with the principles
18 of this section.
19 5. A final judgment of conviction of felonious and in-
20 tentional killing is conclusive for purposes of this section.
21 In the absence of a conviction of felonious and intentional
22 killing the court may determine by a preponderance of evi-
23 dence whether the killing was felonious and intentional for
24 purposes of this section.
25 6. This section does not affect the rights of any person
26 who, before rights under this section have been adjudicated,
27 purchases from the killer for value and without notice prop-
28 erty which the killer would have acquired except for this
29 section, but the killer is liable for the amount of the pro-
30 ceeds or the value of the property. Any insurance company,
31 bank, or other obligor making payment according to the terms
32 of its policy or obligation is not liable by reason of this
33 section unless prior to payment it has received at its home
34 office or principal address written notice of a claim under
35 this section.

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PART 9

CUSTODY AND DEPOSIT OF WILLS

Sec. 2901. NEW SECTION. DEPOSIT OF WILL WITH COURT IN TESTATOR'S LIFETIME. A will may be deposited by the testator or his agent with any court for safekeeping, under rules of the court. The will shall be kept confidential. During the testator's lifetime a deposited will shall be delivered only to him or to a person authorized in writing signed by him to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible, and to assure that it will be resealed and left on deposit after the examination. Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to him on request; or the court may deliver the will to the appropriate court.

Sec. 2902. NEW SECTION. DUTY OF CUSTODIAN OF WILL; LIABILITY. After the death of a testator and on request of an interested person, any person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and if none is known, to an appropriate court. Any person who willfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Any person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

ARTICLE III

PROBATE OF WILLS AND ADMINISTRATION

PART 1

GENERAL PROVISIONS

Section 3101. NEW SECTION. DEVOLUTION OF ESTATE AT DEATH; RESTRICTIONS. The power of a person to leave property by

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1 will, and the rights of creditors, devisees, and heirs to
2 his property are subject to the restrictions and limitations
3 contained in this Act to facilitate the prompt settlement
4 of estates. Upon the death of a person, his real and personal
5 property devolves to the persons to whom it is devised by
6 his last will or to those indicated as substitutes for them
7 in cases involving lapse, renunciation, or other circumstances
8 affecting the devolution of testate estate, or in the absence
9 of testamentary disposition, to his heirs, or to those
10 indicated as substitutes for them in cases involving
11 renunciation or other circumstances affecting devolution of
12 intestate estates, subject to homestead allowance, exempt
13 property and family allowance, to rights of creditors, elec-
14 tive share of the surviving spouse, and to administration.
15 Sec. 3102. NEW SECTION. NECESSITY OF ORDER OF PROBATE
16 FOR WILL. Except as provided in section thirty-one thousand
17 two hundred one (31,201) of this Act, to be effective to prove
18 the transfer of any property or to nominate an executor, a
19 will must be declared to be valid by an order of informal
20 probate by the registrar, or an adjudication of probate by
21 the court, except that a duly executed and unrevoked will
22 which has not been probated may be admitted as evidence of
23 a devise if no court proceeding concerning the succession
24 or administration of the estate has occurred, and either the
25 devisee or his successors and assigns possessed the property
26 devised in accordance with the provisions of the will, or
27 the property devised was not possessed or claimed by anyone
28 by virtue of the decedent's title during the time period for
29 testacy proceedings.
30 Sec. 3103. NEW SECTION. NECESSITY OF APPOINTMENT FOR
31 ADMINISTRATION. Except as otherwise provided in Article four
32 (IV), to acquire the powers and undertake the duties and lia-
33 bilities of a personal representative of a decedent, a person
34 must be appointed by order of the court or registrar, qualify
35 and be issued letters. Administration of an estate is

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1 commenced by the issuance of letters.
2 Sec. 3104. NEW SECTION. CLAIMS AGAINST DECEDENT; NECES-
3 SITY OF ADMINISTRATION. No proceeding to enforce a claim
4 against the estate of a decedent or his successors may be
5 revived or commenced before the appointment of a personal
6 representative. After the appointment and until distribution,
7 all proceedings and actions to enforce a claim against the
8 estate are governed by the procedure prescribed by this
9 Article. After distribution a creditor whose claim has not
10 been barred may recover from the distributees as provided
11 in section thirty-one thousand four (31,004) of this Act or
12 from a former personal representative individually liable
13 as provided in section thirty-one thousand five (31,005) of
14 this Act. This section has no application to a proceeding
15 by a secured creditor of the decedent to enforce his right
16 to his security except as to any deficiency judgment which
17 might be sought therein.
18 Sec. 3105. NEW SECTION. PROCEEDINGS AFFECTING DEVOLUTION
19 AND ADMINISTRATION; JURISDICTION OF SUBJECT MATTER. Persons
20 interested in decedents' estates may apply to the registrar
21 for determination in the informal proceedings provided in
22 this Article, and may petition the court for orders in formal
23 proceedings within the court's jurisdiction including but
24 not limited to those described in this Article. The court
25 has exclusive jurisdiction of formal proceedings to determine
26 how decedents' estates subject to the laws of this state are
27 to be administered, expended and distributed. The court has
28 concurrent jurisdiction of any other action or proceeding
29 concerning a succession or to which an estate, through a per-
30 sonal representative, may be a party, including actions to
31 determine title to property alleged to belong to the estate,
32 and of any action or proceeding in which property distributed
33 by a personal representative or its value is sought to be
34 subjected to rights of creditors or successors of the dece-
35 dent.

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1 Sec. 3106. NEW SECTION. PROCEEDINGS WITHIN THE EXCLUSIVE
2 JURISDICTION OF COURT; SERVICE; JURISDICTION OVER PERSONS.
3 In proceedings within the exclusive jurisdiction of the court
4 where notice is required by this Act or by rule, interested
5 persons may be bound by the orders of the court in respect
6 to property in or subject to the laws of this state by notice
7 in conformity with section one thousand four hundred one
8 (1401) of this Act. An order is binding as to all who are
9 given notice of the proceeding though less than all inter-
10 ested persons are notified.
11 Sec. 3107. NEW SECTION. SCOPE OF PROCEEDINGS; PROCEED-
12 INGS INDEPENDENT; EXCEPTION. Unless supervised administration
13 as described in Part five (5) is involved, each proceeding
14 before the court or registrar is independent of any other
15 proceeding involving the same estate; petitions for formal
16 orders of the court may combine various requests for relief
17 in a single proceeding if the orders sought may be finally
18 granted without delay. Except as required for proceedings
19 which are particularly described by other sections of this
20 Article, no petition is defective because it fails to embrace
21 all matters which might then be the subject of a final order;
22 proceedings for probate of wills or adjudications of no will
23 may be combined with proceedings for appointment of personal
24 representatives; and a proceeding for appointment of a per-
25 sonal representative is concluded by an order making or declin-
26 ing the appointment.
27 Sec. 3108. NEW SECTION. PROBATE, TESTACY AND APPOINTMENT
28 PROCEEDINGS; ULTIMATE TIME LIMIT. No informal probate or
29 appointment proceeding or formal testacy or appointment pro-
30 ceeding, other than a proceeding to probate a will previously
31 probated at the testator's domicile and appointment proceed-
32 ings relating to an estate in which there has been a prior
33 appointment, may be commenced more than three years after
34 the decedent's death, except if a previous proceeding was
35 dismissed because of doubt about the fact of the decedent's

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1 death, appropriate probate, appointment or testacy proceed-
2 ings may be maintained at any time thereafter upon a finding
3 that the decedent's death occurred prior to the initiation
4 of the previous proceeding and the applicant or petitioner
5 has not delayed unduly in initiating the subsequent proceed-
6 ing; appropriate probate, appointment or testacy proceedings
7 may be maintained in relation to the estate of an absent,
8 disappeared or missing person for whose estate a conservator
9 has been appointed, at any time within three years after the
10 conservator becomes able to establish the death of the pro-
11 tected person; and a proceeding to contest an informally pro-
12 bated will and to secure appointment of the person with legal
13 priority for appointment in the event the contest is success-
14 ful, may be commenced within the later of twelve months from
15 the informal probate or three years from the decedent's death.
16 These limitations do not apply to proceedings to construe
17 probated wills or determine heirs of an intestate. Except
18 in proceeding to contest an informally probated will, the
19 date on which a testacy or appointment proceeding is properly
20 commenced shall be deemed to be the date of the decedent's
21 death for purposes of other limitations provisions of this
22 Act which relate to the date of death.
23 Sec. 3109. NEW SECTION. STATUTES OF LIMITATION ON
24 DECEDENT'S CAUSE OF ACTION. No statute of limitation running
25 on a cause of action belonging to a decedent which had not
26 been barred as of the date of his death, shall apply to bar
27 a cause of action surviving the decedent's death sooner than
28 four months after death. A cause of action which, but for
29 this section, would have been barred less than four months
30 after death, is barred after four months unless tolled.
31 PART 2
32 VENUE FOR PROBATE AND ADMINISTRATION;
33 PRIORITY TO ADMINISTER; DEMAND FOR NOTICE
34 Sec. 3201. NEW SECTION. VENUE FOR FIRST AND SUBSEQUENT
35 ESTATE PROCEEDINGS; LOCATION OF PROPERTY.

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1 1. Venue for the first informal or formal testacy or
2 appointment proceedings after a decedent's death is:
3 a. In the county where the decedent had his domicile at
4 the time of his death; or
5 b. If the decedent was not domiciled in this state, in
6 any county where property of the decedent was located at the
7 time of his death.
8 2. Venue for all subsequent proceedings within the exclu-
9 sive jurisdiction of the court is in the place where the ini-
10 tial proceeding occurred, unless the initial proceeding has
11 been transferred as provided in section one thousand three
12 hundred three (1303) of this Act or this section.
13 3. If the first proceeding was informal, on application
14 of an interested person and after notice to the proponent
15 in the first proceeding, the court, upon finding that venue
16 is elsewhere, may transfer the proceeding and the file to
17 the other court.
18 4. For the purpose of aiding determinations concerning
19 location of assets which may be relevant in cases involving
20 nondomiciliaries, a debt, other than one evidenced by
21 investment or commercial paper or other instrument in favor
22 of a nondomiciliary, is located where the debtor resides or,
23 if the debtor is a person other than an individual, at the
24 place where it has its principal office. Commercial paper,
25 investment paper and other instruments are located where the
26 instrument is. An interest in property held in trust is
27 located where the trustee may be sued.
28 Sec. 3202. NEW SECTION. APPOINTMENT OR TESTACY PROCEED-
29 INGS; CONFLICTING CLAIM OF DOMICILE IN ANOTHER STATE. If
30 conflicting claims as to the domicile of a decedent are made
31 in a formal testacy or appointment proceeding commenced in
32 this state, and in a testacy or appointment proceeding after
33 notice pending at the same time in another state, the court
34 of this state must stay, dismiss, or permit suitable amendment
35 in, the proceeding here unless it is determined that the local

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1 proceeding was commenced before the proceeding elsewhere.
2 The determination of domicile in the proceeding first com-
3 menced must be accepted as determinative in the proceeding
4 in this state.
5 Sec. 3203. NEW SECTION. PRIORITY AMONG PERSONS SEEKING
6 APPOINTMENT AS PERSONAL REPRESENTATIVE.
7 1. Whether the proceedings are formal or informal, persons
8 who are not disqualified have priority for appointment in
9 the following order:
10 a. The person with priority as determined by a probated
11 will including a person nominated by a power conferred in
12 a will;
13 b. The surviving spouse of the decedent who is a devisee
14 of the decedent;
15 c. Other devisees of the decedent;
16 d. The surviving spouse of the decedent;
17 e. Other heirs of the decedent;
18 f. Forty-five days after the death of the decedent, any
19 creditor.
20 2. An objection to an appointment can be made only in
21 formal proceedings. In case of objection the priorities
22 stated in subsection one (1) of this section apply except
23 that
24 a. If the estate appears to be more than adequate to meet
25 exemptions and costs of administration but inadequate to
26 discharge anticipated unsecured claims, the court, on petition
27 of creditors, may appoint any qualified person;
28 b. In case of objection to appointment of a person other
29 than one whose priority is determined by will by an heir or
30 devisee appearing to have a substantial interest in the estate,
31 the court may appoint a person who is acceptable to heirs
32 and devisees whose interests in the estate appear to be worth
33 in total more than half of the probable distributable value,
34 or, in default of this accord any suitable person.
35 3. A person entitled to letters under paragraphs b through

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1 e of subsection one (1) of this section, and a person aged
2 eighteen and over who would be entitled to letters but for
3 his age, may nominate a qualified person to act as personal
4 representative. Any person aged eighteen and over may renounce
5 his right to nominate or to an appointment by appropriate
6 writing filed with the court. When two or more persons share
7 a priority, those of them who do not renounce must concur
8 in nominating another to act for them, or in applying for
9 appointment.
10 4. Conservators of the estates of protected persons, or
11 if there is no conservator, any guardian except a guardian
12 ad litem of a minor or incapacitated person, may exercise
13 the same right to nominate, to object to another's appointment,
14 or to participate in determining the preference of a majority
15 in interest of the heirs and devisees that the protected per-
16 son or ward would have if qualified for appointment.
17 5. Appointment of one who does not have priority, including
18 priority resulting from renunciation or nomination determined
19 pursuant to this section, may be made only in formal proceed-
20 ings. Before appointing one without priority, the court must
21 determine that those having priority, although given notice
22 of the proceedings, have failed to request appointment or
23 to nominate another for appointment, and that administration
24 is necessary.
25 6. No person is qualified to serve as a personal repre-
26 sentative who is:
27 a. Under the age of eighteen;
28 b. A person whom the court finds unsuitable in formal
29 proceedings;
30 7. A personal representative appointed by a court of the
31 decedent's domicile has priority over all other persons except
32 where the decedent's will nominates different persons to be
33 personal representative in this state and in the state of
34 domicile. The domiciliary personal representative may nominate
35 another, who shall have the same priority as the domiciliary

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1 personal representative.
2 8. This section governs priority for appointment of a
3 successor personal representative but does not apply to the
4 selection of a special administrator.
5 Sec. 3204. NEW SECTION. DEMAND FOR NOTICE OF ORDER OR
6 FILING CONCERNING DECEDENT'S ESTATE. Any person desiring
7 notice of any order or filing pertaining to a decedent's
8 estate in which he has a financial or property interest, may
9 file a demand for notice with the court at any time after
10 the death of the decedent stating the name of the decedent,
11 the nature of his interest in the estate, and the demandant's
12 address or that of his attorney. The clerk shall mail a copy
13 of the demand to the personal representative if one has been
14 appointed. After filing of a demand, no order or filing to
15 which the demand relates shall be made or accepted without
16 notice as prescribed in section one thousand four hundred
17 one (1401) of this Act to the demandant or his attorney.
18 The validity of an order which is issued or filing which is
19 accepted without compliance with this requirement shall not
20 be affected by the error, but the petitioner receiving the
21 order or the person making the filing may be liable for any
22 damage caused by the absence of notice. The requirement of
23 notice arising from a demand under this provision may be
24 waived in writing by the demandant and shall cease upon the
25 termination of his interest in the estate.
26 PART 3
27 INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS
28 Sec. 3301. NEW SECTION. INFORMAL PROBATE OR APPOINTMENT
29 PROCEEDINGS; APPLICATION; CONTENTS. Applications for informal
30 probate or informal appointment shall be directed to the
31 registrar, and verified by the applicant to be accurate and
32 complete to the best of his knowledge and belief as to the
33 following information:
34 1. Every application for informal probate of a will or
35 for informal appointment of a personal representative, other

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1 than a special, ancillary or successor representative, shall
2 contain the following:
3 a. A statement of the interest of the applicant;
4 b. The name, and date of death of the decedent, his age,
5 and the county and state of his domicile at the time of death,
6 and the names and addresses of the spouse, children, heirs
7 and devisees and the ages of any who are minors so far as
8 known or ascertainable with reasonable diligence by the
9 applicant;
10 c. If the decedent was not domiciled in the state at the
11 time of his death, a statement showing venue;
12 d. A statement identifying and indicating the address
13 of any personal representative of the decedent appointed in
14 this state or elsewhere whose appointment has not been
15 terminated;
16 e. A statement indicating whether the applicant has
17 received a demand for notice, or is aware of any demand for
18 notice of any probate or appointment proceeding concerning
19 the decedent that may have been filed in this state or
20 elsewhere.
21 2. An application for informal probate of a will shall
22 state the following in addition to the statements required
23 by subsection one (1) of this section:
24 a. That the original of the decedent's last will is in
25 the possession of the court, or accompanies the application,
26 or that an authenticated copy of a will probated in another
27 jurisdiction accompanies the application;
28 b. That the applicant, to the best of his knowledge,
29 believes the will to have been validly executed;
30 c. That after the exercise of reasonable diligence, the
31 applicant is unaware of any instrument revoking the will,
32 and that the applicant believes that the instrument which
33 is the subject of the application is the decedent's last will;
34 d. That the time limit for informal probate as provided
35 in this Article has not expired either because three years

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1 or less have passed since the decedent's death, or, if more
2 than three years from death have passed, that circumstances
3 as described by section three thousand one hundred eight
4 (3108) of this Act authorizing tardy probate have occurred.
5 3. An application for informal appointment of a personal
6 representative to administer an estate under a will shall
7 describe the will by date of execution and state the time
8 and place of probate or the pending application or petition
9 for probate. The application for appointment shall adopt
10 the statements in the application or petition for probate
11 and state the name, address and priority for appointment of
12 the person whose appointment is sought.
13 4. An application for informal appointment of an adminis-
14 trator in intestacy shall state in addition to the statements
15 required by subsection one (1) of this section:
16 a. That after the exercise of reasonable diligence, the
17 applicant is unaware of any unrevoked testamentary instrument
18 relating to property having a situs in this state under sec-
19 tion one thousand three hundred one (1301) of this Act, or,
20 a statement why any such instrument of which he may be aware
21 is not being probated;
22 b. The priority of the person whose appointment is sought
23 and the names of any other persons having a prior or equal
24 right to the appointment under section three thousand two
25 hundred three (3203) of this Act.
26 5. An application for appointment of a personal represen-
27 tative to succeed a personal representative appointed under
28 a different testacy status shall refer to the order in the
29 most recent testacy proceeding, state the name and address
30 of the person whose appointment is sought and of the person
31 whose appointment will be terminated if the application is
32 granted, and describe the priority of the applicant.
33 6. An application for appointment of a personal represen-
34 tative to succeed a personal representative who has tendered
35 a resignation as provided in section three thousand six hun-

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1 dred ten (3610), subsection three (3), of this Act, or whose
2 appointment has been terminated by death or removal, shall
3 adopt the statements in the application or petition which
4 led to the appointment of the person being succeeded except
5 as specifically changed or corrected, state the name and
6 address of the person who seeks appointment as successor,
7 and describe the priority of the applicant.
8 Sec. 3302. NEW SECTION. INFORMAL PROBATE; DUTY OF
9 REGISTRAR; EFFECT OF INFORMAL PROBATE. Upon receipt of an
10 application requesting informal probate of a will, the regis-
11 trar, upon making the findings required by section three
12 thousand three hundred three (3303) of this Act shall issue
13 a written statement of informal probate if at least one hun-
14 dred twenty hours have elapsed since the decedent's death.
15 Informal probate is conclusive as to all persons until super-
16 seded by an order in a formal testacy proceeding. No defect
17 in the application or procedure relating thereto which leads
18 to informal probate of a will renders the probate void.
19 Sec. 3303. NEW SECTION. INFORMAL PROBATE; PROOF AND
20 FINDINGS REQUIRED.
21 1. In an informal proceeding for original probate of a
22 will, the registrar shall determine whether:
23 a. The application is complete;
24 b. The applicant has made oath or affirmation that the
25 statements contained in the application are true to the best
26 of his knowledge and belief;
27 c. The applicant appears from the application to be an
28 interested person as defined in section one thousand two hun-
29 dred one (1201), subsection twenty (20), of this Act;
30 d. On the basis of the statements in the application,
31 venue is proper;
32 e. An original, duly executed and apparently unrevoked
33 will is in the registrar's possession;
34 f. Any notice required by section three thousand two hun-
35 dred four (3204) of this Act has been given and that the

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1 application is not within section three thousand three hundred
2 four (3304) of this Act; and
3 g. It appears from the application that the time limit
4 for original probate has not expired.
5 2. The application shall be denied if it indicates that
6 a personal representative has been appointed in another county
7 of this state or except as provided in subsection four (4)
8 of this section, if it appears that this or another will of
9 the decedent has been the subject of a previous probate order.
10 3. A will which appears to have the required signatures
11 and which contains an attestation clause showing that require-
12 ments of execution under section two thousand five hundred
13 two (2502), two thousand five hundred three (2503) or two
14 thousand five hundred six (2506) of this Act have been met
15 shall be probated without further proof. In other cases,
16 the registrar may assume execution if the will appears to
17 have been properly executed, or he may accept a sworn statement
18 or affidavit of any person having knowledge of the circum-
19 stances of execution, whether or not the person was a witness
20 to the will.
21 4. Informal probate of a will which has been previously
22 probated elsewhere may be granted at any time upon written
23 application by any interested person, together with deposit
24 of an authenticated copy of the will and of the statement
25 probating it from the office or court where it was first
26 probated.
27 5. A will from a place which does not provide for probate
28 of a will after death and which is not eligible for probate
29 under subsection one (1) of this section, may be probated
30 in this state upon receipt by the registrar of a duly authen-
31 ticated copy of the will and a duly authenticated certificate
32 of its legal custodian that the copy filed is a true copy
33 and that the will has become operative under the law of the
34 other place.
35 Sec. 3304. NEW SECTION. INFORMAL PROBATE; UNAVAILABLE

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1 IN CERTAIN CASES. Applications for informal probate which
2 relate to one or more of a known series of testamentary instru-
3 ments, other than wills and codicils, the latest of which
4 does not expressly revoke the earlier, shall be declined.
5 Sec. 3305. NEW SECTION. INFORMAL PROBATE; REGISTRAR NOT
6 SATISFIED. If the registrar is not satisfied that a will
7 is entitled to be probated in informal proceedings because
8 of failure to meet the requirements of sections three thousand
9 three hundred three (3303) and three thousand three hundred
10 four (3304) of this Act or any other reason, he may decline
11 the application. A declination of informal probate is not
12 an adjudication and does not preclude formal probate proceed-
13 ings.
14 Sec. 3306. NEW SECTION. INFORMAL PROBATE; NOTICE REQUIRE-
15 MENTS. The moving party must give notice as described by
16 section one thousand four hundred one (1401) of this Act of
17 his application for informal probate to any person demanding
18 it pursuant to section three thousand two hundred four (3204)
19 of this Act; and to any personal representative of the dece-
20 dent whose appointment has not been terminated. No other
21 notice of informal probate is required.
22 Sec. 3307. NEW SECTION. INFORMAL APPOINTMENT PROCEEDINGS;
23 DELAY IN ORDER; DUTY OF REGISTRAR; EFFECT OF APPOINTMENT.
24 1. Upon receipt of an application for informal appointment
25 of a personal representative other than a special administra-
26 tor as provided in section three thousand six hundred fourteen
27 (3614) of this Act, if at least one hundred twenty hours have
28 elapsed since the decedent's death, the registrar, after
29 making the findings required by section three thousand three
30 hundred eight (3308) of this Act, shall appoint the applicant
31 subject to qualification and acceptance; provided, that if
32 the decedent was a nonresident, the registrar shall delay
33 the order of appointment until thirty days have elapsed since
34 death unless the personal representative appointed at the
35 decedent's domicile is the applicant, or unless the decedent's

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1 will directs that his estate be subject to the laws of this
2 state.
3 2. The status of personal representative and the powers
4 and duties pertaining to the office are fully established
5 by informal appointment. An appointment, and the office of
6 personal representative created thereby, is subject to termina-
7 tion as provided in sections three thousand six hundred eight
8 (3608) through three thousand six hundred twelve (3612) of
9 this Act, but is not subject to retroactive vacation.
10 Sec. 3308. NEW SECTION. INFORMAL APPOINTMENT PROCEEDINGS;
11 PROOF AND FINDINGS REQUIRED.
12 1. In informal appointment proceedings, the registrar
13 must determine whether:
14 a. The application for informal appointment of a personal
15 representative is complete;
16 b. The applicant has made oath or affirmation that the
17 statements contained in the application are true to the best
18 of his knowledge and belief;
19 c. The applicant appears from the application to be an
20 interested person as defined in section one thousand two hun-
21 dred one (1201), subsection twenty (20), of this Act;
22 d. On the basis of the statements in the application,
23 venue is proper;
24 e. Any will to which the requested appointment relates
25 has been formally or informally probated; but this requirement
26 does not apply to the appointment of a special administrator;
27 f. Any notice required by section three thousand two hun-
28 dred four (3204) of this Act has been given;
29 g. From the statements in the application, the person
30 whose appointment is sought has priority entitling him to
31 the appointment.
32 2. Unless section three thousand six hundred twelve (3612)
33 of this Act controls, the application must be denied if it
34 indicates that a personal representative who has not filed
35 a written statement of resignation as provided in section

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1 three thousand six hundred ten (3610), subsection three (3),
2 of this Act has been appointed in this or another county of
3 this state, that, unless the applicant is the domiciliary
4 personal representative or his nominee, the decedent was not
5 domiciled in this state and that a personal representative
6 whose appointment has not been terminated has been appointed
7 by a court in the state of domicile, or that other require-
8 ments of this section have not been met.
9 Sec. 3309. NEW SECTION. INFORMAL APPOINTMENT PROCEEDINGS;
10 REGISTRAR NOT SATISFIED. If the registrar is not satisfied
11 that a requested informal appointment of a personal representa-
12 tive should be made because of failure to meet the require-
13 ments of sections three thousand three hundred seven (3307)
14 and three thousand three hundred eight (3308) of this Act,
15 or for any other reason, he may decline the application.
16 A declination of informal appointment is not an adjudication
17 and does not preclude appointment in formal proceedings.
18 Sec. 3310. NEW SECTION. INFORMAL APPOINTMENT PROCEEDINGS;
19 NOTICE REQUIREMENTS. The moving party must give notice as
20 described by section one thousand four hundred one (1401)
21 of this Act of his intention to seek an appointment infor-
22 mally: to any person demanding it pursuant to section three
23 thousand two hundred four (3204) of this Act; and to any per-
24 son having a prior or equal right to appointment not waived
25 in writing and filed with the court. No other notice of an
26 informal appointment proceeding is required.
27 Sec. 3311. NEW SECTION. INFORMAL APPOINTMENT UNAVAILABLE
28 IN CERTAIN CASES. If an application for informal appointment
29 indicates the existence of a possible unrevoked testamentary
30 instrument which may relate to property subject to the laws
31 of this state, and which is not filed for probate in this
32 court, the registrar shall decline the application.
33 PART 4
34 FORMAL TESTACY AND APPOINTMENT PROCEEDINGS
35 Sec. 3401. NEW SECTION. FORMAL TESTACY PROCEEDINGS;

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1 NATURE; WHEN COMMENCED. A formal testacy proceeding is liti-
2 gation to determine whether a decedent left a valid will.
3 A formal testacy proceeding may be commenced by an interested
4 person filing a petition as described in section three thou-
5 sand four hundred two (3402), subsection one (1), of this
6 Act in which he requests that the court, after notice and
7 hearing, enter an order probating a will, or a petition to
8 set aside an informal probate of a will or to prevent informal
9 probate of a will which is the subject of a pending
10 application, or a petition in accordance with section three
11 thousand four hundred two (3402), subsection two (2), of this
12 Act for an order that the decedent died intestate.
13 A petition may seek formal probate of a will without regard
14 to whether the same or a conflicting will has been informally
15 probated. A formal testacy proceeding may, but need not,
16 involve a request for appointment of a personal representative.
17 During the pendency of a formal testacy proceeding, the
18 registrar shall not act upon any application for informal
19 probate of any will of the decedent or any application for
20 informal appointment of a personal representative of the
21 decedent.
22 Unless a petition in a formal testacy proceeding also
23 requests confirmation of the previous informal appointment,
24 a previously appointed personal representative, after receipt
25 of notice of the commencement of a formal probate proceeding,
26 must refrain from exercising his power to make any further
27 distribution of the estate during the pendency of the formal
28 proceeding. A petitioner who seeks the appointment of a
29 different personal representative in a formal proceeding also
30 may request an order restraining the acting personal represen-
31 tative from exercising any of the powers of his office and
32 requesting the appointment of a special administrator. In
33 the absence of a request, or if the request is denied, the
34 commencement of a formal proceeding has no effect on the
35 powers and duties of a previously appointed personal

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1 representative other than those relating to distribution.
2 Sec. 3402. NEW SECTION. FORMAL TESTACY OR APPOINTMENT
3 PROCEEDINGS; PETITION; CONTENTS.
4 1. Petitions for formal probate of a will, or for adjudi-
5 cation of intestacy with or without request for appointment
6 of a personal representative, must be directed to the court,
7 request a judicial order after notice and hearing and contain
8 further statements as indicated in this section. A petition
9 for formal probate of a will:
10 a. Requests an order as to the testacy of the decedent
11 in relation to a particular instrument which may or may not
12 have been informally probated and determining the heirs,
13 b. Contains the statements required for informal appli-
14 cations under section three thousand three hundred one (3301),
15 subsection one (1), of this Act, the statements required by
16 paragraphs b and c of section three thousand three hundred
17 one (3301), subsection two (2), of this Act, and
18 c. States whether the original of the last will of the
19 decedent is in the possession of the court or accompanies
20 the petition.
21 2. If the original will is neither in the possession of
22 the court nor accompanies the petition and no authenticated
23 copy of a will probated in another jurisdiction accompanies
24 the petition, the petition also must state the contents of
25 the will, and indicate that it is lost, destroyed, or other-
26 wise unavailable.
27 3. A petition for adjudication of intestacy and appoint-
28 ment of an administrator in intestacy must request a judicial
29 finding and order that the decedent left no will and deter-
30 mining the heirs, contain the statements required by subsec-
31 tions one (1) and four (4) of section three thousand three
32 hundred one (3301) of this Act and indicate whether supervised
33 administration is sought. A petition may request an order
34 determining intestacy and heirs without requesting the
35 appointment of an administrator, in which case, the statements

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1 required by paragraph b of subsection four (4) of section
2 three thousand three hundred one (3301) of this Act may be
3 omitted.
4 Sec. 3403. NEW SECTION. FORMAL TESTACY PROCEEDING; NOTICE
5 OF HEARING ON PETITION.
6 1. Upon commencement of a formal testacy proceeding, the
7 court shall fix a time and place of hearing. Notice shall
8 be given in the manner prescribed by section one thousand
9 four hundred one (1401) of this Act by the petitioner to the
10 persons herein enumerated and to any additional person who
11 has filed a demand for notice under section three thousand
12 two hundred four (3204) of this Act.
13 Notice shall be given to the following persons: the sur-
14 viving spouse, children, and other heirs of the decedent,
15 the devisees and executors named in any will that is being,
16 or has been, probated, or offered for informal or formal
17 probate in the county, or that is known by the petitioner
18 to have been probated, or offered for informal or formal
19 probate elsewhere, and any personal representative of the
20 decedent whose appointment has not been terminated. Notice
21 may be given to other persons. In addition, the petitioner
22 shall give notice by publication to all unknown persons and
23 to all known persons whose addresses are unknown who have
24 any interest in the matters being litigated.
25 2. If it appears by the petition or otherwise that the
26 fact of the death of the alleged decedent may be in doubt,
27 or on the written demand of any interested person, a copy
28 of the notice of the hearing on said petition shall be sent
29 by registered mail to the alleged decedent at his last known
30 address. The court shall direct the petitioner to report
31 the results of, or make and report back concerning, a
32 reasonably diligent search for the alleged decedent in any
33 manner that may seem advisable, including any or all of the
34 following methods:
35 a. By inserting in one or more suitable periodicals a

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notice requesting information from any person having knowledge of the whereabouts of the alleged decedent;

b. By notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the alleged decedent;

c. By engaging the services of an investigator. The costs of any search so directed shall be paid by the petitioner if there is no administration or by the estate of the decedent in case there is administration.

Sec. 3404. NEW SECTION. FORMAL TESTACY PROCEEDINGS; WRITTEN OBJECTIONS TO PROBATE. Any party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.

Sec. 3405. NEW SECTION. FORMAL TESTACY PROCEEDINGS; UNCONTESTED CASES; HEARINGS AND PROOF. If a petition in a testacy proceeding is unopposed, the court may order probate or intestacy on the strength of the pleadings if satisfied that the conditions of section three thousand four hundred nine (3409) of this Act have been met, or conduct a hearing in open court and require proof of the matters necessary to support the order sought. If evidence concerning execution of the will is necessary, the affidavit or testimony of one of any attesting witnesses to the instrument is sufficient. If the affidavit or testimony of an attesting witness is not available, execution of the will may be proved by other evidence or affidavit.

Sec. 3406. NEW SECTION. FORMAL TESTACY PROCEEDINGS; CONTESTED CASES; TESTIMONY OF ATTESTING WITNESSES.

1. If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses, if within the state competent and able to testify, is required. Due execution of an attested or unattested will may be proved by other evidence.

2. If the will is self-proved, compliance with signature

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1 requirements for execution is conclusively presumed and other
2 requirements of execution are presumed subject to rebuttal
3 without the testimony of any witness upon filing the will
4 and the acknowledgment and affidavits annexed or attached
5 thereto, unless there is proof of fraud or forgery affecting
6 the acknowledgment or affidavit.
7 Sec. 3407. NEW SECTION. FORMAL TESTACY PROCEEDINGS;
8 BURDENS IN CONTESTED CASES. In contested cases, petitioners
9 who seek to establish intestacy have the burden of establish-
10 ing prima facie proof of death, venue, and heirship. Propo-
11 nents of a will have the burden of establishing prima facie
12 proof of due execution in all cases, and, if they are also
13 petitioners, prima facie proof of death and venue. Contes-
14 tants of a will have the burden of establishing lack of testa-
15 mentary intent or capacity, undue influence, fraud, duress,
16 mistake or revocation. Parties have the ultimate burden of
17 persuasion as to matters with respect to which they have the
18 initial burden of proof. If a will is opposed by the petition
19 for probate of a later will revoking the former, it shall
20 be determined first whether the later will is entitled to
21 probate, and if a will is opposed by a petition for a
22 declaration of intestacy, it shall be determined first whether
23 the will is entitled to probate.
24 Sec. 3408. NEW SECTION. FORMAL TESTACY PROCEEDINGS; WILL
25 CONSTRUCTION; EFFECT OF FINAL ORDER IN ANOTHER JURISDICTION.
26 A final order of a court of another state determining testacy,
27 the validity or construction of a will, made in a proceeding
28 involving notice to and an opportunity for contest by all
29 interested persons must be accepted as determinative by the
30 courts of this state if it includes, or is based upon, a
31 finding that the decedent was domiciled at his death in the
32 state where the order was made.
33 Sec. 3409. NEW SECTION. FORMAL TESTACY PROCEEDINGS;
34 ORDER; FOREIGN WILL. After the time required for any notice
35 has expired, upon proof of notice, and after any hearing that

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1 may be necessary, if the court finds that the testator is
2 dead, venue is proper and that the proceeding was commenced
3 within the limitation prescribed by section three thousand
4 one hundred eight (3108) of this Act, it shall determine the
5 decedent's domicile at death, his heirs and his state of
6 testacy. Any will found to be valid and unrevoked shall be
7 formally probated. Termination of any previous informal
8 appointment of a personal representative, which may be appro-
9 priate in view of the relief requested and findings, is
10 governed by section three thousand six hundred twelve (3612)
11 of this Act. The petition shall be dismissed or appropriate
12 amendment allowed if the court is not satisfied that the
13 alleged decedent is dead. A will from a place which does
14 not provide for probate of a will after death, may be proved
15 for probate in this state by a duly authenticated certificate
16 of its legal custodian that the copy introduced is a true
17 copy and that the will has become effective under the law
18 of the other place.
19 Sec. 3410. NEW SECTION. FORMAL TESTACY PROCEEDINGS;
20 PROBATE OF MORE THAN ONE INSTRUMENT. If two or more instru-
21 ments are offered for probate before a final order is entered
22 in a formal testacy proceeding, more than one instrument may
23 be probated if neither expressly revokes the other or contains
24 provisions which work a total revocation by implication.
25 If more than one instrument is probated, the order shall
26 indicate what provisions control in respect to the nomination
27 of an executor, if any. The order may, but need not, indicate
28 how any provisions of a particular instrument are affected
29 by the other instrument. After a final order in a testacy
30 proceeding has been entered, no petition for probate of any
31 other instrument of the decedent may be entertained, except
32 incident to a petition to vacate or modify a previous probate
33 order and subject to the time limits of section three thousand
34 four hundred twelve (3412) of this Act.
35 Sec. 3411. NEW SECTION. FORMAL TESTACY PROCEEDINGS;

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1 PARTIAL INTESTACY. If it becomes evident in the course of
2 a formal testacy proceeding that, though one or more
3 instruments are entitled to be probated, the decedent's estate
4 is or may be partially intestate, the court shall enter an
5 order to that effect.
6 Sec. 3412. NEW SECTION. FORMAL TESTACY PROCEEDINGS;
7 EFFECT OF ORDER; VACATION. Subject to appeal and subject
8 to vacation as provided herein and in section three thousand
9 four hundred thirteen (3413) of this Act, a formal testacy
10 order under sections three thousand four hundred nine (3409)
11 through three thousand four hundred eleven (3411) of this
12 Act, including an order that the decedent left no valid will
13 and determining heirs, is final as to all persons with respect
14 to all issues concerning the decedent's estate that the court
15 considered or might have considered incident to its rendition
16 relevant to the question of whether the decedent left a valid
17 will, and to the determination of heirs, except that:
18 1. The court shall entertain a petition for modification
19 or vacation of its order and probate of another will of the
20 decedent if it is shown that the proponents of the later-
21 offered will were unaware of its existence at the time of
22 the earlier proceeding or were unaware of the earlier
23 proceeding and were given no notice thereof, except by
24 publication.
25 2. If intestacy of all or part of the estate has been
26 ordered, the determination of heirs of the decedent may be
27 reconsidered if it is shown that one or more persons were
28 omitted from the determination and it is also shown that the
29 persons were unaware of their relationship to the decedent,
30 were unaware of his death or were given no notice of any
31 proceeding concerning his estate, except by publication.
32 3. A petition for vacation under either subsection one
33 (1) or two (2) of this section must be filed prior to the
34 earlier of the following time limits:
35 a. If a personal representative has been appointed for

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1 the estate, the time of entry of any order approving final
2 distribution of the estate, or, if the estate is closed by
3 statement, six months after the filing of the closing state-
4 ment.
5 b. Whether or not a personal representative has been
6 appointed for the estate of the decedent, the time prescribed
7 by section three thousand one hundred eight (3108) of this
8 Act when it is no longer possible to initiate an original
9 proceeding to probate a will of the decedent.
10 c. Twelve months after the entry of the order sought to
11 be vacated.
12 4. The order originally rendered in the testacy proceeding
13 may be modified or vacated, if appropriate under the circum-
14 stances, by the order of probate of the later-offered will
15 or the order redetermining heirs.
16 5. The finding of the fact of death is conclusive as to
17 the alleged decedent only if notice of the hearing on the
18 petition in the formal testacy proceeding was sent by
19 registered or certified mail addressed to the alleged decedent
20 at his last known address and the court finds that a search
21 under section three thousand four hundred three (3403),
22 subsection two (2), of this Act was made.
23 If the alleged decedent is not dead, even if notice was
24 sent and search was made, he may recover estate assets in
25 the hands of the personal representative. In addition to
26 any remedies available to the alleged decedent by reason of
27 any fraud or intentional wrongdoing, the alleged decedent
28 may recover any estate or its proceeds from distributees that
29 is in their hands, or the value of distributions received
30 by them, to the extent that any recovery from distributees
31 is equitable in view of all of the circumstances.
32 Sec. 3413. NEW SECTION. FORMAL TESTACY PROCEEDINGS; VA-
33 CATION OF ORDER FOR OTHER CAUSE. For good cause shown, an
34 order in a formal testacy proceeding may be modified or va-
35 cated within the time allowed for appeal.

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1 Sec. 3414. NEW SECTION. FORMAL PROCEEDINGS CONCERNING
2 APPOINTMENT OF PERSONAL REPRESENTATIVE.
3 1. A formal proceeding for adjudication regarding the
4 priority or qualification of one who is an applicant for ap-
5 pointment as personal representative, or of one who previously
6 has been appointed personal representative in informal pro-
7 ceedings, if an issue concerning the testacy of the decedent
8 is or may be involved, is governed by section three thousand
9 four hundred two (3402) of this Act, as well as by this sec-
10 tion. In other cases, the petition shall contain or adopt
11 the statements required by section three thousand three hun-
12 dred one (3301), subsection one (1) of this Act, and describe
13 the question relating to priority or qualification of the
14 personal representative which is to be resolved. If the pro-
15 ceeding precedes any appointment of a personal representative,
16 it shall stay any pending informal appointment proceedings
17 as well as any commenced thereafter. If the proceeding is
18 commenced after appointment, the previously appointed per-
19 sonal representative, after receipt of notice thereof, shall
20 refrain from exercising any power of administration except
21 as necessary to preserve the estate or unless the court or-
22 ders otherwise.
23 2. After notice to interested persons, including all per-
24 sons interested in the administration of the estate as suc-
25 cessors under the applicable assumption concerning testacy,
26 any previously appointed personal representative and any per-
27 son having or claiming priority for appointment as personal
28 representative, the court shall determine who is entitled
29 to appointment under section three thousand two hundred three
30 (3203) of this Act, make a proper appointment and, if appro-
31 priate, terminate any prior appointment found to have been
32 improper as provided in cases of removal under section three
33 thousand six hundred eleven (3611) of this Act.
34 PART 5
35 SUPERVISED ADMINISTRATION

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1 Sec. 3501. NEW SECTION. SUPERVISED ADMINISTRATION; NA-
2 TURE OF PROCEEDING. Supervised administration is a single
3 in rem proceeding to secure complete administration and set-
4 tlement of a decedent's estate under the continuing authority
5 of the court which extends until entry of an order approving
6 distribution of the estate and discharging the personal repre-
7 sentative or other order terminating the proceeding. A su-
8 pervised personal representative is responsible to the court,
9 as well as to the interested parties, and is subject to di-
10 rections concerning the estate made by the court on its own
11 motion or on the motion of any interested party. Except as
12 otherwise provided in this Part, or as otherwise ordered by
13 the court, a supervised personal representative has the same
14 duties and powers as a personal representative who is not
15 supervised.
16 Sec. 3502. NEW SECTION. SUPERVISED ADMINISTRATION; PE-
17 TITION; ORDER. A petition for supervised administration may
18 be filed by any interested person or by a personal represen-
19 tative at any time or the prayer for supervised administra-
20 tion may be joined with a petition in a testacy or appoint-
21 ment proceeding. If the testacy of the decedent and the
22 priority and qualification of any personal representative
23 have not been adjudicated previously, the petition for su-
24 pervised administration shall include the matters required
25 of a petition in a formal testacy proceeding and the notice
26 requirements and procedures applicable to a formal testacy
27 proceeding apply. If not previously adjudicated, the court
28 shall adjudicate the testacy of the decedent and questions
29 relating to the priority and qualifications of the personal
30 representative in any case involving a request for supervised
31 administration, even though the request for supervised ad-
32 ministration may be denied. After notice to interested per-
33 sons, the court shall order supervised administration of a
34 decedent's estate: if the decedent's will directs supervised
35 administration, it shall be ordered unless the court finds

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1 that circumstances bearing on the need for supervised admin-
2 istration have changed since the execution of the will and
3 that there is no necessity for supervised administration;
4 if the decedent's will directs unsupervised administration,
5 supervised administration shall be ordered only upon a find-
6 ing that it is necessary for protection of persons interested
7 in the estate; or in other cases if the court finds that su-
8 pervised administration is necessary under the circumstances.
9 Sec. 3503. NEW SECTION. SUPERVISED ADMINISTRATION; EF-
10 FECT ON OTHER PROCEEDINGS.
11 1. The pendency of a proceeding for supervised adminis-
12 tration of a decedent's estate stays action on any informal
13 application then pending or thereafter filed.
14 2. If a will has been previously probated in informal
15 proceedings, the effect of the filing of a petition for su-
16 pervised administration is as provided for formal testacy
17 proceedings by section three thousand four hundred one (3401)
18 of this Act.
19 3. After he has received notice of the filing of a pe-
20 tition for supervised administration, a personal represen-
21 tative who has been appointed previously shall not exercise
22 his power to distribute any estate. The filing of the pe-
23 tition does not affect his other powers and duties unless
24 the court restricts the exercise of any of them pending full
25 hearing on the petition.
26 Sec. 3504. NEW SECTION. SUPERVISED ADMINISTRATION; POWERS
27 OF PERSONAL REPRESENTATIVE. Unless restricted by the court,
28 a supervised personal representative has, without interim
29 orders approving exercise of a power, all powers of personal
30 representatives under this Act, but he shall not exercise
31 his power to make any distribution of the estate without prior
32 order of the court. Any other restriction on the power of
33 a personal representative which may be ordered by the court
34 must be endorsed on his letters of appointment and, unless
35 so endorsed, is ineffective as to persons dealing in good

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1 faith with the personal representative.
2 Sec. 3505. NEW SECTION. SUPERVISED ADMINISTRATION; IN-
3 TERIM ORDERS; DISTRIBUTION AND CLOSING ORDERS. Unless other-
4 wise ordered by the court, supervised administration is ter-
5 minated by order in accordance with time restrictions, no-
6 tices, and contents of orders prescribed for proceedings under
7 section thirty-one thousand one (31,001) of this Act. Interim
8 orders approving or directing partial distributions or granting
9 other relief may be issued by the court at any time during
10 the pendency of a supervised administration on the application
11 of the personal representative or any interested person.
12 PART 6
13 PERSONAL REPRESENTATIVE; APPOINTMENT,
14 CONTROL AND TERMINATION OF AUTHORITY
15 Sec. 3601. NEW SECTION. QUALIFICATION. Prior to re-
16 ceiving letters, a personal representative shall qualify by
17 filing with the appointing court any required bond and a
18 statement of acceptance of the duties of the office.
19 Sec. 3602. NEW SECTION. ACCEPTANCE OF APPOINTMENT; CON-
20 SENT TO JURISDICTION. By accepting appointment, a personal
21 representative submits personally to the jurisdiction of the
22 court in any proceeding relating to the estate that may be
23 instituted by any interested person. Notice of any proceed-
24 ing shall be delivered to the personal representative, or
25 mailed to him by ordinary first class mail at his address
26 as listed in the application or petition for appointment or
27 as thereafter reported to the court and to his address as
28 then known to the petitioner.
29 Sec. 3603. NEW SECTION. BOND NOT REQUIRED WITHOUT COURT
30 ORDER, EXCEPTIONS. No bond is required of a personal repre-
31 sentative appointed in informal proceedings, except upon the
32 appointment of a special administrator; when an executor or
33 other personal representative is appointed to administer an
34 estate under a will containing an express requirement of bond
35 or when bond is required under section three thousand six

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1 hundred five (3605) of this Act. Bond may be required by
2 court order at the time of appointment of a personal repre-
3 sentative appointed in any formal proceeding except that bond
4 is not required of a personal representative appointed in
5 formal proceedings if the will relieves the personal repre-
6 sentative of bond, unless bond has been requested by an in-
7 terested party and the court is satisfied that it is desir-
8 able. Bond required by any will may be dispensed with in
9 formal proceedings upon determination by the court that it
10 is not necessary. No bond is required of any personal rep-
11 resentative who, pursuant to statute, has deposited cash or
12 collateral with an agency of this state to secure performance
13 of his duties.
14 Sec. 3604. NEW SECTION. BOND AMOUNT; SECURITY; PROCE-
15 DURE; REDUCTION. If bond is required and the provisions of
16 the will or order do not specify the amount, unless stated
17 in his application or petition, the person qualifying shall
18 file a statement under oath with the registrar indicating
19 his best estimate of the value of the personal estate of the
20 decedent and of the income expected from the personal and
21 real estate during the next year, and he shall execute and
22 file a bond with the registrar, or give other suitable se-
23 curity, in an amount not less than the estimate. The regis-
24 trar shall determine that the bond is duly executed by a
25 corporate surety, or one or more individual sureties whose
26 performance is secured by pledge of personal property, mort-
27 gage on real property or other adequate security. The regis-
28 trar may permit the amount of the bond to be reduced by the
29 value of assets of the estate deposited with a domestic fi-
30 nancial institution as defined in section six thousand one
31 hundred one (6101) of this Act in a manner that prevents their
32 unauthorized disposition. On petition of the personal repre-
33 sentative or another interested person the court may excuse
34 a requirement of bond, increase or reduce the amount of the
35 bond, release sureties, or permit the substitution of another

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1 bond with the same or different sureties.
2 Sec. 3605. NEW SECTION. DEMAND FOR BOND BY INTERESTED
3 PERSON. Any person apparently having an interest in the es-
4 tate worth in excess of one thousand dollars, or any creditor
5 having a claim in excess of one thousand dollars, may make
6 a written demand that a personal representative give bond.
7 The demand must be filed with the registrar and a copy mailed
8 to the personal representative, if appointment and qualifi-
9 cation have occurred. Thereupon, bond is required, but the
10 requirement ceases if the person demanding bond ceases to
11 be interested in the estate, or if bond is excused as pro-
12 vided in section three thousand six hundred three (3603) or
13 three thousand six hundred four (3604) of this Act. After
14 he has received notice and until the filing of the bond or
15 cessation of the requirement of bond, the personal represen-
16 tative shall refrain from exercising any powers of his of-
17 fice except as necessary to preserve the estate. Failure
18 of the personal representative to meet a requirement of bond
19 by giving suitable bond within thirty days after receipt of
20 notice is cause for his removal and appointment of a succes-
21 sor personal representative.
22 Sec. 3606. NEW SECTION. TERMS AND CONDITIONS OF BONDS.
23 1. The following requirements and provisions apply to
24 any bond required by this Part:
25 a. Bonds shall name the state as obligee for the bene-
26 fit of the persons interested in the estate and shall be
27 conditioned upon the faithful discharge by the fiduciary of
28 all duties according to law.
29 b. Unless otherwise provided by the terms of the approved
30 bond, sureties are jointly and severally liable with the per-
31 sonal representative and with each other. The address of
32 sureties shall be stated in the bond.
33 c. By executing an approved bond of a personal represen-
34 tative, the surety consents to the jurisdiction of the pro-
35 bate court which issued letters to the primary obligor in

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1 any proceedings pertaining to the fiduciary duties of the
2 personal representative and naming the surety as a party.
3 Notice of any proceeding shall be delivered to the surety
4 or mailed to him by registered or certified mail at his ad-
5 dress as listed with the court where the bond is filed and
6 to his address as then known to the petitioner.
7 d. On petition of a successor personal representative,
8 any other personal representative of the same decedent, or
9 any interested person, a proceeding in the court may be ini-
10 tiated against a surety for breach of the obligation of the
11 bond of the personal representative.
12 e. The bond of the personal representative is not void
13 after the first recovery but may be proceeded against from
14 time to time until the whole penalty is exhausted.
15 2. No action or proceeding may be commenced against the
16 surety on any matter as to which an action or proceeding
17 against the primary obligor is barred by adjudication or
18 limitation.
19 Sec. 3607. NEW SECTION. ORDER RESTRAINING PERSONAL
20 REPRESENTATIVE.
21 1. On petition of any person who appears to have an in-
22 terest in the estate, the court by temporary order may re-
23 strain a personal representative from performing specified
24 acts of administration, disbursement, or distribution, or
25 exercise of any powers or discharge of any duties of his of-
26 fice, or make any other order to secure proper performance
27 of his duty, if it appears to the court that the personal
28 representative otherwise may take some action which would
29 jeopardize unreasonably the interest of the applicant or of
30 some other interested person. Persons with whom the per-
31 sonal representative may transact business may be made parties.
32 2. The matter shall be set for hearing within ten days
33 unless the parties otherwise agree. Notice as the court
34 directs shall be given to the personal representative and
35 his attorney of record, if any, and to any other parties named

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1 defendant in the petition.
2 Sec. 3608. NEW SECTION. TERMINATION OF APPOINTMENT;
3 GENERAL. Termination of appointment of a personal represen-
4 tative occurs as indicated in sections three thousand six
5 hundred nine (3609) through three thousand six hundred twelve
6 (3612) of this Act. Termination ends the right and power
7 pertaining to the office of personal representative as con-
8 ferred by this Act or any will, except that a personal rep-
9 resentative, at any time prior to distribution or until re-
10 strained or enjoined by court order, may perform acts neces-
11 sary to protect the estate and may deliver the assets to a
12 sucessor representative. Termination does not discharge a
13 personal representative from liability for transactions or
14 omissions occurring before termination, or relieve him of
15 the duty to preserve assets subject to his control, to ac-
16 count therefor and to deliver the assets. Termination does
17 not affect the jurisdiction of the court over the personal
18 representative, but terminates his authority to represent
19 the estate in any pending or future proceeding.
20 Sec. 3609. NEW SECTION. TERMINATION OF APPOINTMENT; DEATH
21 OR DISABILITY. The death of a personal representative or
22 the appointment of a conservator for the estate of a per-
23 sonal representative, terminates his appointment. Until ap-
24 pointment and qualification of a successor or special repre-
25 sentative to replace the deceased or protected representative,
26 the representative of the estate of the deceased or protected
27 personal representative, if any, has the duty to protect the
28 estate possessed and being administered by his decedent or
29 ward at the time his appointment terminates, has the power
30 to perform acts necessary for protection and shall account
31 for and deliver the estate assets to a successor or special
32 personal representative upon his appointment and qualifica-
33 tion.
34 Sec. 3610. NEW SECTION. TERMINATION OF APPOINTMENT;
35 VOLUNTARY.

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1. An appointment of a personal representative terminates as provided in section thirty-one thousand three (31,003) of this Act, one year after the filing of a closing statement.

2. An order closing an estate as provided in section thirty-one thousand one (31,001) or thirty-one thousand two (31,002) of this Act terminates an appointment of a personal representative.

3. A personal representative may resign his position by filing a written statement of resignation with the registrar after he has given at least fifteen days written notice to the persons known to be interested in the estate. If no one applies or petitions for appointment of a successor representative within the time indicated in the notice, the filed statement of resignation is ineffective as a termination of appointment and in any event is effective only upon the appointment and qualification of a successor representative and delivery of the assets to him.

Sec. 3611. NEW SECTION. TERMINATION OF APPOINTMENT BY REMOVAL; CAUSE; PROCEDURE.

1. A person interested in the estate may petition for removal of a personal representative for cause at any time. Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in section three thousand six hundred seven (3607) of this Act, after receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration or preserve the estate. If removal is ordered, the court also shall direct by order the disposition of the assets remaining in the name of, or under the control of, the personal representative being removed.

2. Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment

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1 intentionally misrepresented material facts in the proceed-
2 ings leading to his appointment, or that the personal repre-
3 sentative has disregarded an order of the court, has become
4 incapable of discharging the duties of his office, or has
5 mismanaged the estate or failed to perform any duty pertain-
6 ing to the office. Unless the decedent's will directs other-
7 wise, a personal representative appointed at the decedent's
8 domicile, incident to securing appointment of himself or his
9 nominee as ancillary personal representative, may obtain re-
10 moval of another who was appointed personal representative
11 in this state to administer local assets.
12 Sec. 3612. NEW SECTION. TERMINATION OF APPOINTMENT;
13 CHANGE OF TESTACY STATUS. Except as otherwise ordered in
14 formal proceedings, the probate of a will subsequent to the
15 appointment of a personal representative in intestacy or un-
16 der a will which is superseded by formal probate of another
17 will, or the vacation of an informal probate of a will sub-
18 sequent to the appointment of the personal representative
19 thereunder, does not terminate the appointment of a personal
20 representative although his powers may be reduced as provided
21 in section three thousand four hundred one (3401) of this
22 Act. Termination occurs upon appointment in informal or for-
23 mal appointment proceedings of a person entitled to appoint-
24 ment under the later assumption concerning testacy. If no
25 request for new appointment is made within thirty days after
26 expiration of time for appeal from the order in formal tes-
27 tacy proceedings, or from the informal probate, changing the
28 assumption concerning testacy, the previously appointed per-
29 sonal representative upon request may be appointed personal
30 representative under the subsequently probated will, or as
31 in intestacy as the case may be.
32 Sec. 3613. NEW SECTION. SUCCESSOR PERSONAL REPRESENTA-
33 TIVE. Parts three (3) and four (4) of this Article govern
34 proceedings for appointment of a personal representative to
35 succeed one whose appointment has been terminated. After

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1 appointment and qualification, a successor personal represen-
2 tative may be substituted in all actions and proceedings to
3 which the former personal representative was a party, and
4 no notice, process or claim which was given or served upon
5 the former personal representative need be given to or served
6 upon the successor in order to preserve any position or right
7 the person giving the notice or filing the claim may thereby
8 have obtained or preserved with reference to the former per-
9 sonal representative. Except as otherwise ordered by the
10 court, the successor personal representative has the powers
11 and duties in respect to the continued administration which
12 the former personal representative would have had if his ap-
13 pointment had not been terminated.
14 Sec. 3614. NEW SECTION. SPECIAL ADMINISTRATOR; APPOINT-
15 MENT. A special administrator may be appointed:
16 1. Informally by the registrar on the application of any
17 interested person when necessary to protect the estate of
18 a decedent prior to the appointment of a general personal
19 representative or if a prior appointment has been terminated
20 as provided in section three thousand six hundred nine (3609)
21 of this Act.
22 2. In a formal proceeding by order of the court on the
23 petition of any interested person and finding, after notice
24 and hearing, that appointment is necessary to preserve the
25 estate or to secure its proper administration including its
26 administration in circumstances where a general personal
27 representative cannot or should not act. If it appears to
28 the court that an emergency exists, appointment may be or-
29 dered without notice.
30 Sec. 3615. NEW SECTION. SPECIAL ADMINISTRATOR; WHO MAY
31 BE APPOINTED.
32 1. If a special administrator is to be appointed pend-
33 ing the probate of a will which is the subject of a pending
34 application or petition for probate, the person named exec-
35 utor in the will shall be appointed if available, and quali-

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1 fied.
2 2. In other cases, any proper person may be appointed
3 special administrator.
4 Sec. 3616. NEW SECTION. SPECIAL ADMINISTRATOR; APPOINTED
5 INFORMALLY; POWERS AND DUTIES. A special administrator ap-
6 pointed by the registrar in informal proceedings pursuant
7 to section three thousand six hundred fourteen (3614), subsec-
8 tion one (1) of this Act has the duty to collect and manage
9 the assets of the estate, to preserve them, to account there-
10 for and to deliver them to the general personal representative
11 upon his qualification. The special administrator has the
12 power of a personal representative under this Act necessary
13 to perform his duties.
14 Sec. 3617. NEW SECTION. SPECIAL ADMINISTRATOR; FORMAL
15 PROCEEDINGS; POWER AND DUTIES. A special administrator ap-
16 pointed by order of the court in any formal proceeding has
17 the power of a general personal representative except as li-
18 mited in the appointment and duties as prescribed in the or-
19 der. The appointment may be for a specified time, to perform
20 particular acts or on other terms as the court may direct.
21 Sec. 3618. NEW SECTION. TERMINATION OF APPOINTMENT;
22 SPECIAL ADMINISTRATOR. The appointment of a special adminis-
23 trator terminates in accordance with the provisions of the
24 order of appointment or on the appointment of a general per-
25 sonal representative. In other cases, the appointment of
26 a special administrator is subject to termination as provided
27 in sections three thousand six hundred eight (3608) through
28 three thousand six hundred eleven (3611) of this Act.
29 PART 7
30 DUTIES AND POWERS OF PERSONAL REPRESENTATIVES
31 Sec. 3701. NEW SECTION. TIME OF ACCRUAL OF DUTIES AND
32 POWERS. The duties and powers of a personal representative
33 commence upon his appointment. The powers of a personal rep-
34 resentative relate back in time to give acts by the person
35 appointed which are beneficial to the estate occurring prior

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1 to appointment the same effect as those occurring thereafter.
2 Prior to appointment, a person named executor in a will may
3 carry out written instructions of the decedent relating to
4 his body, funeral and burial arrangements. A personal
5 representative may ratify and accept acts on behalf of the
6 estate done by others where the acts would have been proper
7 for a personal representative.
8 Sec. 3702. NEW SECTION. PRIORITY AMONG DIFFERENT LET-
9 TERS. A person to whom general letters are issued first has
10 exclusive authority under the letters until his appointment
11 is terminated or modified. If, through error, general let-
12 ters are afterwards issued to another, the first appointed
13 representative may recover any property of the estate in the
14 hands of the representative subsequently appointed, but the
15 acts of the latter done in good faith before notice of the
16 first letters are not void for want of validity of appoint-
17 ment.
18 Sec. 3703. NEW SECTION. GENERAL DUTIES; RELATION AND
19 LIABILITY TO PERSONS INTERESTED IN ESTATE; STANDING TO SUE.
20 1. A personal representative is a fiduciary who shall
21 observe the standards of care applicable to trustees as de-
22 scribed by section seven thousand three hundred two (7302)
23 of this Act. A personal representative is under a duty to
24 settle and distribute the estate of the decedent in accor-
25 dance with the terms of any probated and effective will and
26 this Act, and as expeditiously and efficiently as is con-
27 sistent with the best interests of the estate. He shall use
28 the authority conferred upon him by this Act, the terms of
29 the will, if any, and any order in proceedings to which he
30 is party for the best interests of successors to the estate.
31 2. A personal representative shall not be surcharged for
32 acts of administration or distribution if the conduct in ques-
33 tion was authorized at the time. Subject to other obligations
34 of administration, an informally probated will is authority
35 to administer and distribute the estate according to its

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1 terms. An order of appointment of a personal representative,
2 whether issued in informal or formal proceedings, is authority
3 to distribute apparently intestate assets to the heirs of
4 the decedent if, at the time of distribution, the personal
5 representative is not aware of a pending testacy proceeding,
6 a proceeding to vacate an order entered in an earlier tes-
7 tacy proceeding, a formal proceeding questioning his appoint-
8 ment or fitness to continue, or a supervised administration
9 proceeding. Nothing in this section affects the duty of the
10 personal representative to administer and distribute the
11 estate in accordance with the rights of claimants, the sur-
12 viving spouse, any minor and dependent children and any
13 pretermitted child of the decedent as described elsewhere
14 in this Act.
15 3. Except as to proceedings which do not survive the death
16 of the decedent, a personal representative of a decedent domi-
17 ciled in this state at his death has the same standing to
18 sue and be sued in the courts of this state and the courts
19 of any other jurisdiction as his decedent had immediately
20 prior to death.
21 Sec. 3704. NEW SECTION. PERSONAL REPRESENTATIVE TO PRO-
22 CEED WITHOUT COURT ORDER; EXCEPTION. A personal representa-
23 tive shall proceed expeditiously with the settlement and dis-
24 tribution of a decedent's estate and, except as otherwise
25 specified or ordered in regard to a supervised personal rep-
26 resentative, do so without adjudication, order, or direction
27 of the court, but he may invoke the jurisdiction of the court,
28 in proceedings authorized by this Act, to resolve questions
29 concerning the estate or its administration.
30 Sec. 3705. NEW SECTION. DUTY OF PERSONAL REPRESENTATIVE;
31 INFORMATION TO HEIRS AND DEVISEES. Not later than thirty
32 days after his appointment every personal representative,
33 except any special administrator, shall give information of
34 his appointment to the heirs and devisees, including, if there
35 has been no formal testacy proceeding and if the personal

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1 representative was appointed on the assumption that the de-
2 cedent died intestate, the devisees in any will mentioned
3 in the application for appointment of a personal representa-
4 tive. The information shall be delivered or sent by ordinary
5 mail to each of the heirs and devisees whose address is rea-
6 sonably available to the personal representative. The duty
7 does not extend to require information to persons who have
8 been adjudicated in a prior formal testacy proceeding to have
9 no interest in the estate. The information shall include
10 the name and address of the personal representative, indicate
11 that it is being sent to persons who have or may have some
12 interest in the estate being administered, indicate whether
13 bond has been filed, and describe the court where papers
14 relating to the estate are on file. The personal represen-
15 tative's failure to give this information is a breach of his
16 duty to the persons concerned but does not affect the validity
17 of his appointment, his powers or other duties. A personal
18 representative may inform other persons of his appointment
19 by delivery or ordinary first class mail.
20 Sec. 3706. NEW SECTION. DUTY OF PERSONAL REPRESENTATIVE;
21 INVENTORY AND APPRAISEMENT. Within three months after his
22 appointment, a personal representative, who is not a special
23 administrator or a successor to another representative who
24 has previously discharged this duty, shall prepare and file
25 or mail an inventory of property owned by the decedent at
26 the time of his death, listing it with reasonable detail,
27 and indicating as to each listed item, its fair market value
28 as of the date of the decedent's death, and the type and
29 amount of any encumbrance that may exist with reference to
30 any item.
31 The personal representative shall send a copy of the in-
32 ventory to interested persons who request it, or he may file
33 the original of the inventory with the court.
34 Sec. 3707. NEW SECTION. EMPLOYMENT OF APPRAISERS. The
35 personal representative may employ a qualified and disin-

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sted appraiser to assist him in ascertaining the fair rket value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

Sec. 3708. NEW SECTION. DUTY OF PERSONAL REPRESENTATIVE; SUPPLEMENTARY INVENTORY. If any property not included in the original inventory comes to the knowledge of a personal representative or if the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

Sec. 3709. NEW SECTION. DUTY OF PERSONAL REPRESENTATIVE; POSSESSION OF ESTATE. Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all

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1 steps reasonably necessary for the management, protection
2 and preservation of, the estate in his possession. He may
3 maintain an action to recover possession of property or to
4 determine the title thereto.
5 Sec. 3710. NEW SECTION. POWER TO AVOID TRANSFERS. The
6 property liable for the payment of unsecured debts of a de-
7 cedent includes all property transferred by him by any means
8 which is in law void or voidable as against his creditors,
9 and subject to prior liens, the right to recover this prop-
10 erty, so far as necessary for the payment of unsecured debts
11 of the decedent, is exclusively in the personal representa-
12 tive.
13 Sec. 3711. NEW SECTION. POWERS OF PERSONAL REPRESENTA-
14 TIVES; IN GENERAL. Until termination of his appointment a
15 personal representative has the same power over the title
16 to property of the estate that an absolute owner would have,
17 in trust however, for the benefit of the creditors and others
18 interested in the estate. This power may be exercised with-
19 out notice, hearing, or order of court.
20 Sec. 3712. NEW SECTION. IMPROPER EXERCISE OF POWER;
21 BREACH OF FIDUCIARY DUTY. If the exercise of power concern-
22 ing the estate is improper, the personal representative is
23 liable to interested persons for damage or loss resulting
24 from breach of his fiduciary duty to the same extent as a
25 trustee of an express trust. The rights of purchasers and
26 others dealing with a personal representative shall be de-
27 termined as provided in sections three thousand seven hundred
28 thirteen (3713) and three thousand seven hundred fourteen
29 (3714) of this Act.
30 Sec. 3713. NEW SECTION. SALE, ENCUMBRANCE OR TRANSAC-
31 TION INVOLVING CONFLICT OF INTEREST; VOIDABLE; EXCEPTIONS.
32 Any sale or encumbrance to the personal representative, his
33 spouse, agent or attorney, or any corporation or trust in
34 which he has a substantial beneficial interest, or any trans-
35 action which is affected by a substantial conflict of in-

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1 terest on the part of the personal representative, is void-
2 able by any person interested in the estate except one who
3 has consented after fair disclosure, unless:
4 1. The will or a contract entered into by the decedent
5 expressly authorized the transaction; or
6 2. The transaction is approved by the court after no-
7 tice to interested persons.
8 Sec. 3714. NEW SECTION. PERSONS DEALING WITH PERSONAL
9 REPRESENTATIVE; PROTECTION. A person who in good faith either
10 assists a personal representative or deals with him for value
11 is protected as if the personal representative properly exer-
12 cised his power. The fact that a person knowingly deals with
13 a personal representative does not alone require the person
14 to inquire into the existence of a power or the propriety
15 of its exercise. Except for restrictions on powers of
16 supervised personal representatives which are endorsed on
17 letters as provided in section three thousand five hundred
18 four (3504) of this Act, no provision in any will or order
19 of court purporting to limit the power of a personal
20 representative is effective except as to persons with actual
21 knowledge thereof. A person is not bound to see to the proper
22 application of estate assets paid or delivered to a personal
23 representative. The protection here expressed extends to
24 instances in which some procedural irregularity or
25 jurisdictional defect occurred in proceedings leading to the
26 issuance of letters, including a case in which the alleged
27 decedent is found to be alive. The protection here expressed
28 is not by substitution for that provided by comparable
29 provisions of the laws relating to commercial transactions
30 and laws simplifying transfers of securities by fiduciaries.
31 Sec. 3715. NEW SECTION. TRANSACTIONS AUTHORIZED FOR
32 PERSONAL REPRESENTATIVES; EXCEPTIONS. Except as restricted
33 or otherwise provided by the will or by an order in a formal
34 proceeding and subject to the priorities stated in section
35 three thousand nine hundred two (3902) of this Act, a per-

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1 sonal representative, acting reasonably for the benefit of
2 the interested persons, may properly:
3 1. Retain assets owned by the decedent pending distri-
4 bution or liquidation including those in which the repre-
5 sentative is personally interested or which are otherwise
6 improper for trust investment;
7 2. Receive assets from fiduciaries, or other sources;
8 3. Perform, compromise or refuse performance of the de-
9 cedent's contracts that continue as obligations of the estate,
10 as he may determine under the circumstances. In performing
11 enforceable contracts by the decedent to convey or lease land,
12 the personal representative, among other possible courses
13 of action, may:
14 a. Execute and deliver a deed of conveyance for cash pay-
15 ment of all sums remaining due or the purchaser's note for
16 the sum remaining due secured by a mortgage or deed of trust
17 on the land; or
18 b. Deliver a deed in escrow with directions that the pro-
19 ceeds, when paid in accordance with the escrow agreement,
20 be paid to the successors of the decedent, as designated in
21 the escrow agreement;
22 4. Satisfy written charitable pledges of the decedent
23 irrespective of whether the pledges constituted binding ob-
24 ligations of the decedent or were properly presented as claims,
25 if in the judgment of the personal representative the dece-
26 dent would have wanted the pledges completed under the cir-
27 cumstances;
28 5. If funds are not needed to meet debts and expenses
29 currently payable and are not immediately distributable, de-
30 posit or invest liquid assets of the estate, including moneys
31 received from the sale of other assets, in federally insured
32 interest-bearing accounts, readily marketable secured loan
33 arrangements or other prudent investments which would be rea-
34 sonable for use by trustees generally;
35 6. Acquire or dispose of an asset, including land in this

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1 or another state, for cash or on credit, at public or private
2 sale; and manage, develop, improve, exchange, petition, change
3 the character of, or abandon an estate asset;
4 7. Make ordinary or extraordinary repairs or alterations
5 in buildings or other structures, demolish any improvements,
6 raze existing or erect new party walls or buildings;
7 8. Subdivide, develop or dedicate land to public use;
8 make or obtain the vacation of plats and adjust boundaries;
9 or adjust differences in valuation on exchange or partition
10 by giving or receiving considerations; or dedicate easements
11 to public use without consideration;
12 9. Enter for any purpose into a lease as lessor or lessee,
13 with or without option to purchase or renew, for a term with-
14 in or extending beyond the period of administration;
15 10. Enter into a lease or arrangement for exploration
16 and removal of minerals or other natural resources or enter
17 into a pooling or unitization agreement;
18 11. Abandon property when, in the opinion of the personal
19 representative, it is valueless, or is so encumbered, or is
20 in condition that it is of no benefit to the estate;
21 12. Vote stocks or other securities in person or by gen-
22 eral or limited proxy;
23 13. Pay calls, assessments, and other sums chargeable
24 or accruing against or on account of securities, unless barred
25 by the provisions relating to claims;
26 14. Hold a security in the name of a nominee or in other
27 form without disclosure of the interest of the estate but
28 the personal representative is liable for any act of the
29 nominee in connection with the security so held;
30 15. Insure the assets of the estate against damage, loss
31 and liability and himself against liability as to third per-
32 sons;
33 16. Borrow money with or without security to be repaid
34 from the estate assets or otherwise; and advance money for
35 the protection of the estate;

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1 17. Effect a fair and reasonable compromise with any
2 debtor or obligor, or extend, renew or in any manner modify
3 the terms of any obligation owing to the estate. If the per-
4 sonal representative holds a mortgage, pledge or other lien
5 upon property of another person, he may, in lieu of fore-
6 closure, accept a conveyance or transfer of encumbered assets
7 from the owner thereof in satisfaction of the indebtedness
8 secured by lien;
9 18. Pay taxes, assessments, compensation of the personal
10 representative, and other expenses incident to the adminis-
11 tration of the estate;
12 19. Sell or exercise stock subscription or conversion
13 rights; consent, directly or through a committee or other
14 agent, to the reorganization, consolidation, merger, disso-
15 lution, or liquidation of a corporation or other business
16 enterprise;
17 20. Allocate items of income or expense to either estate
18 income or principal, as permitted or provided by law;
19 21. Employ persons, including attorneys, auditors, in-
20 vestment advisors, or agents, even if they are associated
21 with the personal representative, to advise or assist the
22 personal representative in the performance of his adminis-
23 trative duties; act without independent investigation upon
24 their recommendations; and instead of acting personally, em-
25 ploy one or more agents to perform any act of administration,
26 whether or not discretionary;
27 22. Prosecute or defend claims, or proceedings in any
28 jurisdiction for the protection of the estate and of the per-
29 sonal representative in the performance of his duties;
30 23. Sell, mortgage, or lease any real or personal prop-
31 erty of the estate or any interest therein for cash, credit,
32 or for part cash and part credit, and with or without security
33 for unpaid balances;
34 24. Continue any unincorporated business or venture in
35 which the decedent was engaged at the time of his death in

1 the same business form for a period of not more than four
2 months from the date of appointment of a general personal
3 representative if continuation is a rasonable means of pre-
4 serving the value of the business including good will; in
5 the same business form for any additional period of time that
6 may be approved by order of the court in a formal proceeding
7 to which the persons interested in the estate are parties;
8 or throughout the period of administration if the business
9 is incorporated by the personal representative and if none
10 of the probable distributees of the business who are compe-
11 tent adults object to its incorporation and retention in the
12 estate;
13 25. Incorporate any business or venture in which the de-
14 cedent was engaged at the time of his death;
15 26. Provide for exoneration of the personal representa-
16 tive from personal liability in any contract entered into
17 on behalf of the estate;
18 27. Satisfy and settle claims and distribute the estate
19 as provided in this Act.
20 Sec. 3716. NEW SECTION. POWERS AND DUTIES OF SUCCESSOR
21 PERSONAL REPRESENTATIVE. A successor personal representative
22 has the same power and duty as the original personal repre-
23 sentative to complete the administration and distribution
24 of the estate, as expeditiously as possible, but he shall
25 not exercise any power expressly made personal to the exec-
26 utor named in the will.
27 Sec. 3717. NEW SECTION. CO-REPRESENTATIVES; WHEN JOINT
28 ACTION REQUIRED. If two or more persons are appointed co-
29 representatives and unless the will provides otherwise, the
30 concurrence of all is required on all acts connected with
31 the administration and distribution of the estate. This re-
32 striction does not apply when any co-representative receives
33 and receipts for property due the estate, when the concur-
34 rence of all cannot readily be obtained in the time reason-
35 ably available for emergency action necessary to preserve

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1 the estate, or when a co-representative has been delegated
2 to act for the others. Persons dealing with a co-represen-
3 tative if actually unaware that another has been appointed
4 to serve with him or if advised by the personal representa-
5 tive with whom they deal that he has authority to act alone
6 for any of the reasons mentioned herein, are as fully pro-
7 tected as if the person with whom they dealt had been the
8 sole personal representative.
9 Sec. 3718. NEW SECTION. POWERS OF SURVIVING PERSONAL
10 REPRESENTATIVE. Unless the terms of the will otherwise pro-
11 vide, every power exercisable by personal co-representatives
12 may be exercised by the one or more remaining after the ap-
13 pointment of one or more is terminated, and if one of two
14 or more nominated as co-executors is not appointed, those
15 appointed may exercise all the powers incident to the office.
16 Sec. 3719. NEW SECTION. COMPENSATION OF PERSONAL REPRE-
17 SENTATIVE. A personal representative is entitled to reason-
18 able compensation for his services. If a will provides for
19 compensation of the personal representative and there is no
20 contract with the decedent regarding compensation, he may
21 renounce the provision before qualifying and be entitled to
22 reasonable compensation. A personal representative also may
23 renounce his right to all or any part of the compensation.
24 A written renunciation of fee may be filed with the court.
25 Sec. 3720. NEW SECTION. EXPENSES IN ESTATE LITIGATION.
26 If any personal representative or person nominated as per-
27 sonal representative defends or prosecutes any proceeding
28 in good faith, whether successful or not he is entitled to
29 receive from the estate his necessary expenses and disburse-
30 ments including reasonable attorneys' fees incurred.
31 Sec. 3721. NEW SECTION. PROCEEDINGS FOR REVIEW OF EM-
32 PLOYMENT OF AGENTS AND COMPENSATION OF PERSONAL REPRESENTA-
33 TIVES AND EMPLOYEES OF ESTATE. After notice to all inter-
34 ested persons or on petition of an interested person or on
35 appropriate motion if administration is supervised, the pro-

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1 priety of employment of any person by a personal representa-
2 tive including any attorney, auditor, investment advisor or
3 other specialized agent or assistant, the reasonableness of
4 the compensation of any person so employed, or the reason-
5 ableness of the compensation determined by the personal rep-
6 resentative for his own services, may be reviewed by the
7 court. Any person who has received excessive compensation
8 from an estate for services rendered may be ordered to make
9 appropriate refunds.

10 PART 8

11 CREDITORS' CLAIMS

12 Section 3801. NEW SECTION. NOTICE TO CREDITORS. Unless
13 notice has already been given under this section, a personal
14 representative upon his appointment shall publish a notice
15 once a week for three successive weeks in a newspaper of
16 general circulation in the county announcing his appoint-
17 ment and address and notifying creditors of the estate to
18 present their claims within four months after the date of
19 the first publication of the notice or be forever barred.

20 Sec. 3802. NEW SECTION. STATUTES OF LIMITATIONS. Unless
21 an estate is insolvent the personal representative, with the
22 consent of all successors, may waive any defense of limitations
23 available to the estate. If the defense is not waived, no
24 claim which was barred by any statute of limitations at the
25 time of the decedent's death shall be allowed or paid. The
26 running of any statute of limitations measured from some other
27 event than death and advertisement for claims against a
28 decedent is suspended during the four months following the
29 decedent's death but resumes thereafter as to claims not
30 barred pursuant to the sections which follow. For purposes
31 of any statute of limitations, the proper presentation of
32 a claim under section three thousand eight hundred four (3804)
33 of this Act is equivalent to commencement of a proceeding
34 on the claim.

35 Sec. 3803. NEW SECTION. LIMITATIONS ON PRESENTATION

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1 OF CLAIMS.
2 1. All claims against a decedent's estate which arose
3 before the death of the decedent, including claims of the
4 state and any subdivision thereof, whether due or to become
5 due, absolute or contingent, liquidated or unliquidated,
6 founded on contract, tort, or other legal basis, if not barred
7 earlier by other statute of limitations, are barred against
8 the estate, the personal representative, and the heirs and
9 devisees of the decedent, unless presented as follows:
10 a. Within four months after the date of the first pub-
11 lication of notice to creditors if notice is given in compli-
12 ance with section three thousand eight hundred one (3801)
13 of this Act; provided, claims barred by the nonclaim statute
14 at the decedent's domicile before the first publication for
15 claims in this state are also barred in this state.
16 b. Within three years after the decedent's death, if
17 notice to creditors has not been published.
18 2. All claims against a decedent's estate which arise
19 at or after the death of the decedent, including claims of
20 the state and any subdivision thereof, whether due or to
21 become due, absolute or contingent, liquidated or unliquidated,
22 founded on contract, tort, or other legal basis, are barred
23 against the estate, the personal representative, and the
24 heirs and devisees of the decedent, unless presented as
25 follows:
26 a. A claim based on a contract with the personal repre-
27 sentative, within four months after performance by the personal
28 representative is due;
29 b. Any other claim, within four months after it arises.
30 3. Nothing in this section affects or prevents:
31 a. Any proceeding to enforce any mortgage, pledge, or
32 other lien upon property of the estate; or
33 b. To the limits of the insurance protection only, any
34 proceeding to establish liability of the decedent or the
35 personal representative for which he is protected by liability

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1 insurance.
2 Sec. 3804. NEW SECTION. MANNER OF PRESENTATION OF CLAIMS.
3 Claims against a decedent's estate may be presented as follows:
4 1. The claimant may deliver or mail to the personal repre-
5 sentative a written statement of the claim indicating its
6 basis, the name and address of the claimant, and the amount
7 claimed, or may file a written statement of the claim, in
8 the form prescribed by rule, with the clerk of the court.
9 The claim is deemed presented on the first to occur of receipt
10 of the written statement of claim by the personal represen-
11 tative, or the filing of the claim with the court. If a claim
12 is not yet due, the date when it will become due shall be
13 stated. If the claim is contingent or unliquidated, the
14 nature of the uncertainty shall be stated. If the claim is
15 secured, the security shall be described. Failure to describe
16 correctly the security, the nature of any uncertainty, and
17 the due date of a claim not yet due does not invalidate the
18 presentation made.
19 2. The claimant may commence a proceeding against the
20 personal representative in any court where the personal repre-
21 sentative may be subjected to jurisdiction, to obtain payment
22 of his claim against the estate, but the commencement of the
23 proceeding must occur within the time limited for presenting
24 the claim. No presentation of claim is required in regard
25 to matters claimed in proceedings against the decedent which
26 were pending at the time of his death.
27 3. If a claim is presented under subsection one (1) of
28 this section, no proceeding thereon may be commenced more
29 than sixty days after the personal representative has mailed
30 a notice of disallowance; but, in the case of a claim which
31 is not presently due or which is contingent or unliquidated,
32 the personal representative may consent to an extension of
33 the sixty-day period, or to avoid injustice the court, on
34 petition, may order an extension of the sixty-day period,
35 but in no event shall the extension run beyond the applicable

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1 statute of limitations.
2 Sec. 3805. NEW SECTION. CLASSIFICATION OF CLAIMS.
3 1. If the applicable assets of the estate are insufficient
4 to pay all claims in full, the personal representative shall
5 make payment in the following order:
6 a. Costs and expenses of administration;
7 b. Reasonable funeral expenses and reasonable and necessary
8 medical and hospital expenses of the last illness of the dece-
9 dent, including compensation of persons attending him;
10 c. Debts and taxes with preference under federal law or
11 the laws of this state;
12 d. All other claims.
13 2. No preference shall be given in the payment of any
14 claim over any other claim of the same class, and a claim
15 due and payable shall not be entitled to a preference over
16 claims not due.
17 Sec. 3806. NEW SECTION. ALLOWANCE OF CLAIMS.
18 1. As to claims presented in the manner described in sec-
19 tion three thousand eight hundred four (3804) of this Act
20 within the time limit prescribed in section three thousand
21 eight hundred three (3803) of this Act, the personal repre-
22 sentative may mail a notice to any claimant stating that the
23 claim has been disallowed. If, after allowing or disallowing
24 a claim, the personal representative changes his decision
25 concerning the claim, he shall notify the claimant. The
26 personal representative may not change a disallowance of a
27 claim after the time for the claimant to file a petition for
28 allowance or to commence a proceeding on the claim has run
29 and the claim has been barred. Every claim which is disallowed
30 in whole or in part by the personal representative is barred
31 so far as not allowed unless the claimant files a petition
32 for allowance in the court or commences a proceeding against
33 the personal representative not later than sixty days after
34 the mailing of the notice of disallowance or partial allowance
35 if the notice warns the claimant of the impending bar. Fail-

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1 ure of the personal representative to mail notice to a claim-
2 ant of action on his claim for sixty days after the time for
3 original presentation of the claim has expired has the effect
4 of a notice of allowance.
5 2. Upon the petition of the personal representative or
6 of a claimant in a proceeding for the purpose, the court may
7 allow in whole or in part any claim or claims presented to
8 the personal representative or filed with the clerk of the
9 court in due time and not barred by subsection one (1) of
10 this section. Notice in this proceeding shall be given to
11 the claimant, the personal representative and those other
12 persons interested in the estate as the court may direct by
13 order entered at the time the proceeding is commenced.
14 3. A judgment in a proceeding in another court against
15 a personal representative to enforce a claim against a dece-
16 dent's estate is an allowance of the claim.
17 4. Unless otherwise provided in any judgment in another
18 court entered against the personal representative, allowed
19 claims bear interest at the legal rate for the period commenc-
20 ing sixty days after the time for original presentation of
21 the claim has expired unless based on a contract making a
22 provision for interest, in which case they bear interest in
23 accordance with that provision.
24 Sec. 3807. NEW SECTION. PAYMENT OF CLAIMS.
25 1. Upon the expiration of four months from the date of
26 the first publication of the notice to creditors, the personal
27 representative shall proceed to pay the claims allowed against
28 the estate in the order of priority prescribed, after making
29 provision for homestead, family and support allowances, for
30 claims already presented which have not yet been allowed or
31 whose allowance has been appealed, and for unbarred claims
32 which may yet be presented, including costs and expenses of
33 administration. By petition to the court in a proceeding
34 for the purpose, or by appropriate motion if the administration
35 is supervised, a claimant whose claim has been allowed but

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1 not paid as provided herein may secure an order directing
2 the personal representative to pay the claim to the extent
3 that funds of the estate are available for the payment.
4 2. The personal representative at any time may pay any
5 just claim which has not been barred, with or without formal
6 presentation, but he is personally liable to any other claim-
7 ant whose claim is allowed and who is injured by such payment
8 if:
9 a. The payment was made before the expiration of the time
10 limit stated in subsection one (1) of this section and the
11 personal representative failed to require the payee to give
12 adequate security for the refund of any of the payment neces-
13 sary to pay other claimants; or
14 b. The payment was made, due to the negligence or willful
15 fault of the personal representative, in such manner as to
16 deprive the injured claimant of his priority.
17 Sec. 3808. NEW SECTION. INDIVIDUAL LIABILITY OF PERSONAL
18 REPRESENTATIVE.
19 1. Unless otherwise provided in the contract, a personal
20 representative is not individually liable on a contract prop-
21 erly entered into in his fiduciary capacity in the course
22 of administration of the estate unless he fails to reveal
23 his representative capacity and identify the estate in the
24 contract.
25 2. A personal representative is individually liable for
26 obligations arising from ownership or control of the estate
27 or for torts committed in the course of administration of
28 the estate only if he is personally at fault.
29 3. Claims based on contracts entered into by a personal
30 representative in his fiduciary capacity, on obligations aris-
31 ing from ownership or control of the estate or on torts com-
32 mitted in the course of estate administration may be asserted
33 against the estate by proceeding against the personal repre-
34 sentative in his fiduciary capacity, whether or not the per-
35 sonal representative is individually liable therefor.

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1 4. Issues of liability as between the estate and the per-
2 sonal representative individually may be determined in a pro-
3 ceeding for accounting, surcharge or indemnification or other
4 appropriate proceeding.
5 Sec. 3809. NEW SECTION. SECURED CLAIMS. Payment of
6 a secured claim is upon the basis of the amount allowed if
7 the creditor surrenders his security; otherwise payment is
8 upon the basis of one of the following:
9 1. If the creditor exhausts his security before receiving
10 payment, unless precluded by other law, upon the amount of
11 the claim allowed less the fair value of the security; or
12 2. If the creditor does not have the right to exhaust
13 his security or has not done so, upon the amount of the claim
14 allowed less the value of the security determined by convert-
15 ing it into money according to the terms of the agreement
16 pursuant to which the security was delivered to the creditor,
17 or by the creditor and personal representative by agreement,
18 arbitration, compromise or litigation.
19 Sec. 3810. NEW SECTION. CLAIMS NOT DUE AND CONTINGENT
20 OR UNLIQUIDATED CLAIMS.
21 1. If a claim which will become due at a future time
22 or a contingent or unliquidated claim becomes due or certain
23 before the distribution of the estate, and if the claim has
24 been allowed or established by a proceeding, it is paid in
25 the same manner as presently due and absolute claims of the
26 same class.
27 2. In other cases the personal representative or, on peti-
28 tion of the personal representative or the claimant in a spe-
29 cial proceeding for the purpose, the court may provide for
30 payment as follows:
31 a. If the claimant consents, he may be paid the present
32 or agreed value of the claim, taking any uncertainty into
33 account;
34 b. Arrangement for future payment, or possible payment,
35 on the happening of the contingency or on liquidation may

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1 be made by creating a trust, giving a mortgage, obtaining
2 a bond or security from a distributee, or otherwise.
3 Sec. 3811. NEW SECTION. COUNTERCLAIMS. In allowing a
4 claim the personal representative may deduct any counter-
5 claim which the estate has against the claimant. In deter-
6 mining a claim against an estate a court shall reduce the
7 amount allowed by the amount of any counterclaims and, if
8 the counterclaims exceed the claim, render a judgment against
9 the claimant in the amount of the excess. A counterclaim,
10 liquidated or unliquidated, may arise from a transaction other
11 than that upon which the claim is based. A counterclaim may
12 give rise to relief exceeding in amount or different in kind
13 from that sought in the claim.
14 Sec. 3812. NEW SECTION. EXECUTION AND LEVIES PROHIBITED.
15 No execution may issue upon nor may any levy be made against
16 any property of the estate under any judgment against a dece-
17 dent or a personal representative, but this section shall
18 not be construed to prevent the enforcement of mortgages,
19 pledges or liens upon real or personal property in an appro-
20 priate proceeding.
21 Sec. 3813. NEW SECTION. COMPROMISE OF CLAIMS. When a
22 claim against the estate has been presented in any manner,
23 the personal representative may, if it appears for the best
24 interest of the estate, compromise the claim, whether due
25 or not due, absolute or contingent, liquidated or unliquidated.
26 Sec. 3814. NEW SECTION. ENCUMBERED ASSETS. If any assets
27 of the estate are encumbered by mortgage, pledge, lien, or
28 other security interest, the personal representative may pay
29 the encumbrance or any part thereof, renew or extend any
30 obligation secured by the encumbrance or convey or transfer
31 the assets to the creditor in satisfaction of his lien, in
32 whole or in part, whether or not the holder of the encumbrance
33 has filed a claim, if it appears to be for the best interest
34 of the estate. Payment of an encumbrance does not increase
35 the share of the distributee entitled to the encumbered assets

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1 unless the distributee is entitled to exoneration.
2 Sec. 3815. NEW SECTION. ADMINISTRATION IN MORE THAN ONE
3 STATE; DUTY OF PERSONAL REPRESENTATIVE.
4 1. All assets of estates being administered in this state
5 are subject to all claims, allowances and charges existing
6 or established against the personal representative wherever
7 appointed.
8 2. If the estate either in this state or as a whole is
9 insufficient to cover all family exemptions and allowances
10 determined by the law of the decedent's domicile, prior charges
11 and claims, after satisfaction of the exemptions, allowances
12 and charges, each claimant whose claim has been allowed either
13 in this state or elsewhere in administrations of which the
14 personal representative is aware, is entitled to receive pay-
15 ment of an equal proportion of his claim. If a preference
16 or security in regard to a claim is allowed in another
17 jurisdiction but not in this state, the creditor so benefited
18 is to receive dividends from local assets only upon the bal-
19 ance of his claim after deducting the amount of the benefit.
20 3. In case the family exemptions and allowances, prior
21 charges and claims of the entire estate exceed the total value
22 of the portions of the estate being administered separately
23 and this state is not the state of the decedent's last
24 domicile, the claims allowed in this state shall be paid their
25 proportion if local assets are adequate for the purpose, and
26 the balance of local assets shall be transferred to the domi-
27 ciliary personal representative. If local assets are not
28 sufficient to pay all claims allowed in this state the amount
29 to which they are entitled, local assets shall be marshalled
30 so that each claim allowed in this state is paid its propor-
31 tion as far as possible, after taking into account all divi-
32 dends on claims allowed in this state from assets in other
33 jurisdictions.
34 Sec. 3816. NEW SECTION. FINAL DISTRIBUTION TO DOMICILIARY
35 REPRESENTATIVE. The estate of a nonresident decedent being

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1 administered by a personal representative appointed in this
2 state shall, if there is a personal representative of the
3 decedent's domicile willing to receive it, be distributed
4 to the domiciliary personal representative for the benefit
5 of the successors of the decedent unless by virtue of the
6 decedent's will, if any, and applicable choice of law rules,
7 the successors are identified pursuant to the local law of
8 this state without reference to the local law of the dece-
9 dent's domicile; the personal representative of this state,
10 after reasonable inquiry, is unaware of the existence or iden-
11 tity of a domiciliary personal representative; or the court
12 orders otherwise in a proceeding for a closing order under
13 section thirty-one thousand one (31,001) of this Act or inci-
14 dent to the closing of a supervised administration. In other
15 cases, distribution of the estate of a decedent shall be made
16 in accordance with the other Parts of this Article.
17 PART 9
18 SPECIAL PROVISIONS RELATING TO DISTRIBUTION
19 Sec. 3901. NEW SECTION. SUCCESSORS' RIGHTS IF NO ADMIN-
20 ISTRATION. In the absence of administration, the heirs and
21 devisees are entitled to the estate in accordance with the
22 terms of a probated will or the laws of intestate succession.
23 Devisees may establish title by the probated will to devised
24 property. Persons entitled to property by homestead allowance,
25 exemption or intestacy may establish title thereto by proof
26 of the decedent's ownership, his death, and their relationship
27 to the decedent. Successors take subject to all charges inci-
28 dent to administration, including the claims of creditors
29 and allowances of surviving spouse and dependent children,
30 and subject to the rights of others resulting from abatement,
31 retainer, advancement, and ademption.
32 Sec. 3902. NEW SECTION. DISTRIBUTION; ORDER IN WHICH
33 ASSETS APPROPRIATED; ABATEMENT.
34 1. Except as provided in subsection two (2) of this sec-
35 tion and except as provided in connection with the share of

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1 the surviving spouse who elects to take an elective share,
2 shares of distributees abate, without any preference or
3 priority as between real and personal property, in the
4 following order: property not disposed of by the will;
5 residuary devises; general devises; specific devises. For
6 purposes of abatement, a general devise charged on any specific
7 property or fund is a specific devise to the extent of the
8 value of the property on which it is charged, and upon the
9 failure or insufficiency of the property on which it is
10 charged, a general devise to the extent of the failure or
11 insufficiency. Abatement within each classification is in
12 proportion to the amounts of property each of the beneficiaries
13 would have received if full distribution of the property had
14 been made in accordance with the terms of the will.
15 2. If the will expresses an order of abatement, or if
16 the testamentary plan or the express or implied purpose of
17 the devise would be defeated by the order of abatement stated
18 in subsection one (1) of this section, the shares of the dis-
19 tributees abate as may be found necessary to give effect to
20 the intention of the testator.
21 3. If the subject of a preferred devise is sold or used
22 incident to administration, abatement shall be achieved by
23 appropriate adjustments in, or contribution from, other
24 interests in the remaining assets.
25 Sec. 3903. NEW SECTION. RIGHT OF RETAINER. The amount
26 of a noncontingent indebtedness of a successor to the estate
27 if due, or its present value if not due, shall be offset
28 against the successor's interest; but the successor has the
29 benefit of any defense which would be available to him in
30 a direct proceeding for recovery of the debt.
31 Sec. 3904. NEW SECTION. INTEREST ON GENERAL PECUNIARY
32 DEVISE. General pecuniary devises bear interest at the legal
33 rate beginning one year after the first appointment of a per-
34 sonal representative until payment, unless a contrary intent
35 is indicated by the will.

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1 Sec. 3905. NEW SECTION. PENALTY CLAUSE FOR CONTEST.
2 A provision in a will purporting to penalize any interested
3 person for contesting the will or instituting other proceed-
4 ings relating to the estate is unenforceable if probable cause
5 exists for instituting proceedings.
6 Sec. 3906. NEW SECTION. DISTRIBUTION IN KIND; VALUATION;
7 METHOD.
8 1. Unless a contrary intention is indicated by the will,
9 the distributable assets of a decedent's estate shall be dis-
10 tributed in kind to the extent possible through application
11 of the following provisions:
12 a. A specific devisee is entitled to distribution of the
13 thing devised to him, and a spouse or child who has selected
14 particular assets of an estate as provided in section two
15 thousand four hundred two (2402) of this Act shall receive
16 the items selected.
17 b. Any homestead or family allowance or devise payable
18 in money may be satisfied by value in kind provided:
19 (1) The person entitled to the payment has not demanded
20 payment in cash;
21 (2) The property distributed in kind is valued at fair
22 market value as of the date of its distribution, and
23 (3) No residuary devisee has requested that the asset
24 in question remain a part of the residue of the estate.
25 c. For the purpose of valuation under paragraph b of sub-
26 section one (1) of this section securities regularly traded
27 on recognized exchanges, if distributed in kind, are valued
28 at the price for the last sale of like securities traded on
29 the business day prior to distribution, or if there was no
30 sale on that day, at the median between amounts bid and offered
31 at the close of that day. Assets consisting of sums owed
32 the decedent or the estate by solvent debtors as to which
33 there is no known dispute or defense are valued at the sum
34 due with accrued interest or discounted to the date of
35 distribution. For assets which do not have readily

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1 ascertainable values, a valuation as of a date not more than
2 thirty days prior to the date of distribution, if otherwise
3 reasonable, controls. For purposes of facilitating
4 distribution, the personal representative may ascertain the
5 value of the assets as of the time of the proposed distribution
6 in any reasonable way, including the employment of qualified
7 appraisers, even if the assets may have been previously
8 appraised.
9 d. The residuary estate shall be distributed in kind if
10 there is no objection to the proposed distribution and it
11 is practicable to distribute undivided interests. In other
12 cases, residuary property may be converted into cash for
13 distribution.
14 2. After the probable charges against the estate are
15 known, the personal representative may mail or deliver a
16 proposal for distribution to all persons who have a right
17 to object to the proposed distribution. The right of any
18 distributee to object to the proposed distribution on the
19 basis of the kind or value of asset he is to receive, if not
20 waived earlier in writing, terminates if he fails to object
21 in writing received by the personal representative within
22 thirty days after mailing or delivery of the proposal.
23 Sec. 3907. NEW SECTION. DISTRIBUTION IN KIND; EVIDENCE.
24 If distribution in kind is made, the personal representative
25 shall execute an instrument or deed of distribution assigning,
26 transferring or releasing the assets to the distributee as
27 evidence of the distributee's title to the property.
28 Sec. 3908. NEW SECTION. DISTRIBUTION; RIGHT OR TITLE
29 OF DISTRIBUTEE. Proof that a distributee has received an
30 instrument or deed of distribution of assets in kind, or pay-
31 ment in distribution, from a personal representative, is con-
32 clusive evidence that the distributee has succeeded to the
33 interest of the estate in the distributed assets, as against
34 all persons interested in the estate, except that the personal
35 representative may recover the assets or their value if the

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1 distribution was improper.
2 Sec. 3909. NEW SECTION. IMPROPER DISTRIBUTION; LIABILITY
3 OF DISTRIBUTEE. Unless the distribution or payment no longer
4 can be questioned because of adjudication, estoppel, or limi-
5 tation, a distributee of property improperly distributed or
6 paid, or a claimant who was improperly paid, is liable to
7 return the property improperly received and its income since
8 distribution if he has the property. If he does not have
9 the property, then he is liable to return the value as of
10 the date of disposition of the property improperly received
11 and its income and gain received by him.
12 Sec. 3910. NEW SECTION. PURCHASERS FROM DISTRIBUTEES
13 PROTECTED. If property distributed in kind or a security
14 interest therein is acquired by a purchaser, or lender, for
15 value from a distributee who has received an instrument or
16 deed of distribution from the personal representative, the
17 purchaser or lender takes title free of any claims of the
18 estate and incurs no personal liability to the estate, whether
19 or not the distribution was proper. To be protected under
20 this provision, a purchaser or lender need not inquire whether
21 a personal representative acted properly in making the dis-
22 tribution in kind.
23 Sec. 3911. NEW SECTION. PARTITION FOR PURPOSE OF DISTRI-
24 BUTION. When two or more heirs or devisees are entitled to
25 distribution of undivided interests in any real or personal
26 property of the estate, the personal representative or one
27 or more of the heirs or devisees may petition the court prior
28 to the formal or informal closing of the estate, to make par-
29 tition. After notice to the interested heirs or devisees,
30 the court shall partition the property in the same manner
31 as provided by the law for civil actions of partition. The
32 court may direct the personal representative to sell any prop-
33 erty which cannot be partitioned without prejudice to the
34 owners and which cannot conveniently be allotted to any one
35 party.

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1 Sec. 3912. NEW SECTION. PRIVATE AGREEMENTS AMONG SUCCES-
2 SORS TO DECEDENT BINDING ON PERSONAL REPRESENTATIVE. Subject
3 to the rights of creditors and taxing authorities, competent
4 successors may agree among themselves to alter the interests,
5 shares, or amounts to which they are entitled under the will
6 of the decedent, or under the laws of intestacy, in any way
7 that they provide in a written contract executed by all who
8 are affected by its provisions. The personal representative
9 shall abide by the terms of the agreement subject to his obli-
10 gation to administer the estate for the benefit of creditors,
11 to pay all taxes and costs of administration, and to carry
12 out the responsibilities of his office for the benefit of
13 any successors of the decedent who are not parties. Personal
14 representatives of decedents' estates are not required to
15 see to the performance of trusts if the trustee thereof is
16 another person who is willing to accept the trust.
17 Accordingly, trustees of a testamentary trust are successors
18 for the purposes of this section. Nothing herein relieves
19 trustees of any duties owed to beneficiaries of trusts.
20 Sec. 3913. NEW SECTION. DISTRIBUTIONS TO TRUSTEE.
21 1. Before distributing to a trustee, the personal repre-
22 sentative may require that the trust be registered if the
23 state in which it is to be administered provides for registra-
24 tion and that the trustee inform the beneficiaries as provided
25 in section seven thousand three hundred three (7303) of this
26 Act.
27 2. If the trust instrument does not excuse the trustee
28 from giving bond, the personal representative may petition
29 the appropriate court to require that the trustee post bond
30 if he apprehends that distribution might jeopardize the inter-
31 ests of persons who are not able to protect themselves, and
32 he may withhold distribution until the court has acted.
33 3. No inference of negligence on the part of the personal
34 representative shall be drawn from his failure to exercise
35 the authority conferred by subsections one (1) and two (2)

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1 of this section.
2 Sec. 3914. NEW SECTION. DISPOSITION OF UNCLAIMED ASSETS.
3 1. If an heir, devisee or claimant cannot be found, the
4 personal representative shall distribute the share of the
5 missing person to his conservator, if any, otherwise to the
6 treasurer of state to become a part of the state escheat fund.
7 2. The money received by the treasurer of state shall
8 be paid to the person entitled on proof of his right thereto
9 or, if the treasurer of state refuses or fails to pay, the
10 person may petition the court which appointed the personal
11 representative, whereupon the court upon notice to the
12 treasurer of state may determine the person entitled to the
13 money and order the treasurer to pay it to him. No interest
14 is allowed thereon and the heir, devisee or claimant shall
15 pay all costs and expenses incident to the proceeding. If
16 no petition is made to the court within eight years after
17 payment to the treasurer of state, the right of recovery is
18 barred.
19 Sec. 3915. NEW SECTION. DISTRIBUTION TO PERSON UNDER
20 DISABILITY. A personal representative may discharge his obli-
21 gation to distribute to any person under legal disability
22 by distributing to his conservator, or any other person autho-
23 rized by this Act or otherwise to give a valid receipt and
24 discharge for the distribution.
25 Sec. 3916. NEW SECTION. APPORTIONMENT OF ESTATE TAXES.
26 1. For purposes of this section:
27 a. "Estate" means the gross estate of a decedent as deter-
28 mined for the purpose of federal estate tax and the estate
29 tax payable to this state;
30 b. "Person" means any individual, partnership, associ-
31 ation, joint stock company, corporation, government, political
32 subdivision, governmental agency, or local governmental agency;
33 c. "Person interested in the estate" means any person
34 entitled to receive, or who has received, from a decedent
35 or by reason of the death of a decedent any property or

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1 interest therein included in the decedent's estate. It
2 includes a personal representative, conservator, and trustee;
3 d. "State" means any state, territory, or possession of
4 the United States, the District of Columbia, and the Common-
5 wealth of Puerto Rico;
6 e. "Tax" means the federal estate tax and the additional
7 inheritance tax imposed by chapter four hundred fifty (450)
8 of the Code and interest and penalties imposed in addition
9 to the tax;
10 f. "Fiduciary" means personal representative or trustee.
11 2. Unless the will otherwise provides, the tax shall be
12 apportioned among all persons interested in the estate. The
13 apportionment is to be made in the proportion that the value
14 of the interest of each person interested in the estate bears
15 to the total value of the interests of all persons inter-
16 ested in the estate. The values used in determining the tax
17 are to be used for that purpose. If the decedent's will
18 directs a method of apportionment of tax different from the
19 method described in this Act, the method described in the
20 will controls.
21 3. The court in which venue lies for the administration
22 of the estate of a decedent, on petition for the purpose may
23 determine the apportionment of the tax.
24 a. If the court finds that it is inequitable to apportion
25 interest and penalties in the manner provided in subsection
26 two (2) of this section, because of special circumstances,
27 it may direct apportionment thereof in the manner it finds
28 equitable.
29 b. If the court finds that the assessment of penalties
30 and interest assessed in relation to the tax is due to delay
31 caused by the negligence of the fiduciary, the court may
32 charge him with the amount of the assessed penalties and
33 interest.
34 c. In any action to recover from any person interested
35 in the estate the amount of the tax apportioned to the person

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1 in accordance with this Act the determination of the court
2 in respect thereto shall be prima facie correct.
3 4. The personal representative or other person in posses-
4 sion of the property of the decedent required to pay the tax
5 may withhold from any property distributable to any person
6 interested in the estate, upon its distribution to him, the
7 amount of tax attributable to his interest. If the property
8 in possession of the personal representative or other person
9 required to pay the tax and distributable to any person inter-
10 ested in the estate is insufficient to satisfy the propor-
11 tionate amount of the tax determined to be due from the person,
12 the personal representative or other person required to pay
13 the tax may recover the deficiency from the person interested
14 in the estate. If the property is not in the possession of
15 the personal representative or the other person required to
16 pay the tax, the personal representative or the other person
17 required to pay the tax may recover from any person interested
18 in the estate the amount of the tax apportioned to the person
19 in accordance with this Act.
20 If property held by the personal representative is distrib-
21 uted prior to final apportionment of the tax, the distributee
22 shall provide a bond or other security for the apportionment
23 liability in the form and amount prescribed by the personal
24 representative.
25 5. In making an apportionment, allowances shall be made
26 for any exemptions granted, any classification made of persons
27 interested in the estate and for any deductions and credits
28 allowed by the law imposing the tax.
29 Any exemption or deduction allowed by reason of the rela-
30 tionship of any person to the decedent or by reason of the
31 purposes of the gift inures to the benefit of the person bear-
32 ing such relationship or receiving the gift; but if an inter-
33 est is subject to a prior present interest which is not allow-
34 able as a deduction, the tax apportionable against the present
35 interest shall be paid from principal.

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1 Any deduction for property previously taxed and any credit
2 for gift taxes or death taxes of a foreign country paid by
3 the decedent or his estate inures to the proportionate benefit
4 of all persons liable to apportionment.
5 Any credit for inheritance, succession or estate taxes
6 or taxes in the nature thereof applicable to property or
7 interests includable in the estate, inures to the benefit
8 of the persons or interests chargeable with the payment thereof
9 to the extent proportionately that the credit reduces the
10 tax.
11 To the extent that property passing to or in trust for
12 a surviving spouse or any charitable, public or similar gift
13 or devisee is not an allowable deduction for purposes of the
14 tax solely by reason of an inheritance tax or other death
15 tax imposed upon and deductible from the property, the property
16 is not included in the computation provided for in subsection
17 two (2) of this section hereof, and to that extent no appor-
18 tionment is made against the property. The sentence imme-
19 diately preceding does not apply to any case if the result
20 would be to deprive the estate of a deduction otherwise allow-
21 able under section two thousand fifty-three (d) (2053(d))
22 of the Internal Revenue Code of 1954, as amended, of the
23 United States, relating to deduction for state death taxes
24 on transfers for public, charitable, or religious uses.
25 6. No interest in income and no estate for years or for
26 life or other temporary interest in any property or fund is
27 subject to apportionment as between the temporary interest
28 and the remainder. The tax on the temporary interest and
29 the tax, if any, on the remainder is chargeable against the
30 corpus of the property or funds subject to the temporary
31 interest and remainder.
32 7. Neither the personal representative nor other person
33 required to pay the tax is under any duty to institute any
34 action to recover from any person interested in the estate
35 the amount of the tax apportioned to the person until the

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1 expiration of the three months next following final
2 determination of the tax. A personal representative or other
3 person required to pay the tax who institutes the action
4 within a reasonable time after the three months' period is
5 not subject to any liability or surcharge because any portion
6 of the tax apportioned to any person interested in the state
7 was collectible at a time following the death of the decedent
8 but thereafter became uncollectible. If the personal represen-
9 tative or other person required to pay the tax cannot collect
10 from any person interested in the estate the amount of the
11 tax apportioned to the person, the amount not recoverable
12 shall be equitably apportioned among the other persons inter-
13 ested in the estate who are subject to apportionment.
14 8. A personal representative acting in another state or
15 a person required to pay the tax domiciled in another state
16 may institute an action in the courts of this state and may
17 recover a proportionate amount of the federal estate tax,
18 of an estate tax payable to another state or of a death duty
19 due by a decedent's estate to another state, from a person
20 interested in the estate who is either domiciled in this state
21 or who owns property in this state subject to attachment or
22 execution. For the purposes of the action the determination
23 of apportionment by the court having jurisdiction of the
24 administration of the decedent's estate in the other state
25 is prima facie correct.
26 PART 10
27 CLOSING ESTATES
28 Sec. 31001. NEW SECTION. FORMAL PROCEEDINGS TERMINATING
29 ADMINISTRATION; TESTATE OR INTESTATE; ORDER OF GENERAL
30 PROTECTION.
31 1. A personal representative or any interested person
32 may petition for an order of complete settlement of the estate.
33 The personal representative may petition at any time, and
34 any other interested person may petition after one year from
35 the appointment of the original personal representative except

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1 that no petition under this section may be entertained until
2 the time for presenting claims which arose prior to the death
3 of the decedent has expired. The petition may request the
4 court to determine testacy, if not previously determined,
5 to consider the final account or compel or approve an
6 accounting and distribution, to construe any will or determine
7 heirs and adjudicate the final settlement and distribution
8 of the estate. After notice to all interested persons and
9 hearing the court may enter an order or orders, on appropriate
10 conditions, determining the persons entitled to distribution
11 of the estate, and, as circumstances require, approving
12 settlement and directing or approving distribution of the
13 estate and discharging the personal representative from further
14 claim or demand of any interested person.
15 2. If one or more heirs or devisees were omitted as parties
16 in, or were not given notice of, a previous formal testacy
17 proceeding, the court, on proper petition for an order of
18 complete settlement of the estate under this section, and
19 after notice to the omitted or unnotified persons and other
20 interested parties determined to be interested on the
21 assumption that the previous order concerning testacy is
22 conclusive as to those given notice of the earlier proceeding,
23 may determine testacy as it affects the omitted persons and
24 confirm or alter the previous order of testacy as it affects
25 all interested persons as appropriate in the light of the
26 new proofs. In the absence of objection by an omitted or
27 unnotified person, evidence received in the original testacy
28 proceeding shall constitute prima facie proof of due execution
29 of any will previously admitted to probate, or of the fact
30 that the decedent left no valid will if the prior proceedings
31 determined this fact.
32 Sec. 31002. NEW SECTION. FORMAL PROCEEDINGS TERMINATING
33 TESTATE ADMINISTRATION; ORDER CONSTRUING WILL WITHOUT ADJUDICA-
34 TING TESTACY. A personal representative administering an
35 estate under an informally probated will or any devisee under

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1 an informally probated will may petition for an order of
2 settlement of the estate which will not adjudicate the testacy
3 status of the decedent. The personal representative may
4 petition at any time, and a devisee may petition after one
5 year, from the appointment of the original personal
6 representative, except that no petition under this section
7 may be entertained until the time for presenting claims which
8 arose prior to the death of the decedent has expired. The
9 petition may request the court to consider the final account
10 or compel or approve an accounting and distribution, to
11 construe the will and adjudicate final settlement and
12 distribution of the estate. After notice to all devisees
13 and the personal representative and hearing, the court may
14 enter an order or orders, on appropriate conditions,
15 determining the persons entitled to distribution of the estate
16 under the will, and, as circumstances require, approving
17 settlement and directing or approving distribution of the
18 estate and discharging the personal representative from further
19 claim or demand of any devisee who is a party to the proceeding
20 and those he represents. If it appears that a part of the
21 estate is intestate, the proceedings shall be dismissed or
22 amendments made to meet the provisions of section thirty-one
23 thousand one (31001) of this Act.
24 Sec. 31003. NEW SECTION. CLOSING ESTATES; BY SWORN
25 STATEMENT OF PERSONAL REPRESENTATIVE.
26 1. Unless prohibited by order of the court and except
27 for estates being administered in supervised administration
28 proceedings, a personal representative may close an estate
29 by filing with the court no earlier than six months after
30 the date of original appointment of a general personal
31 representative for the estate, a verified statement stating
32 that he, or a prior personal representative whom he has
33 succeeded, has or have:
34 a. Published notice to creditors as provided by section
35 three thousand eight hundred one (3801) of this Act and that

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1 the first publication occurred more than six months prior
2 to the date of the statement.
3 b. Fully administered the estate of the decedent by making
4 payment, settlement or other disposition of all claims which
5 were presented, expenses of administration and estate,
6 inheritance and other death taxes, except as specified in
7 the statement, and that the assets of the estate have been
8 distributed to the persons entitled. If any claims remain
9 undischarged, the statement shall state whether the personal
10 representative has distributed the estate subject to possible
11 liability with the agreement of the distributees or it shall
12 state in detail other arrangements which have been made to
13 accommodate outstanding liabilities; and
14 c. Sent a copy thereof to all distributees of the estate
15 and to all creditors or other claimants of whom he is aware
16 whose claims are neither paid nor barred and has furnished
17 a full account in writing of his administration to the distri-
18 butees whose interests are affected thereby.
19 2. If no proceedings involving the personal representative
20 are pending in the court one year after the closing statement
21 is filed, the appointment of the personal representative
22 terminates.
23 Sec. 31004. NEW SECTION. LIABILITY OF DISTRIBUTEES TO
24 CLAIMANTS. After assets of an estate have been distributed
25 and subject to section thirty-one thousand six (31006) of
26 this Act, an undischarged claim not barred may be prosecuted
27 in a proceeding against one or more distributees. No
28 distributee shall be liable to claimants for amounts in excess
29 of the value of his distribution as of the time of
30 distribution. As between distributees, each shall bear the
31 cost of satisfaction of unbarred claims as if the claim had
32 been satisfied in the course of administration. Any
33 distributee who shall have failed to notify other distributees
34 of the demand made upon him by the claimant in sufficient
35 time to permit them to join in any proceeding in which the

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1 claim was asserted against him loses his right of contribution
2 against other distributees.
3 Sec. 31005. NEW SECTION. LIMITATIONS ON PROCEEDINGS
4 AGAINST PERSONAL REPRESENTATIVE. Unless previously barred
5 by adjudication and except as provided in the closing
6 statement, the rights of successors and of creditors whose
7 claims have not otherwise been barred against the personal
8 representative for breach of fiduciary duty are barred unless
9 a proceeding to assert the same is commenced within six months
10 after the filing of the closing statement. The rights thus
11 barred do not include rights to recover from a personal
12 representative for fraud, misrepresentation, or inadequate
13 disclosure related to the settlement of the decedent's estate.
14 Sec. 31006. NEW SECTION. LIMITATIONS ON ACTIONS AND
15 PROCEEDINGS AGAINST DISTRIBUTEES. Unless previously
16 adjudicated in a formal testacy proceeding or in a proceeding
17 settling the accounts of a personal representative or otherwise
18 barred, the claim of any claimant to recover from a distributee
19 who is liable to pay the claim, and the right of any heir
20 or devisee or of a successor personal representative acting
21 in their behalf, to recover property improperly distributed
22 or the value thereof from any distributee is forever barred
23 at the later of three years after the decedent's death; or
24 one year after the time of distribution thereof. This section
25 does not bar an action to recover property or value received
26 as the result of fraud.
27 Sec. 31007. NEW SECTION. CERTIFICATE DISCHARGING LIENS
28 SECURING FIDUCIARY PERFORMANCE. After his appointment has
29 terminated, the personal representative, his sureties, or
30 any successor of either, upon the filing of a verified
31 application showing, so far as is known by the applicant,
32 that no action concerning the estate is pending in any court,
33 is entitled to receive a certificate from the registrar that
34 the personal representative appears to have fully administered
35 the estate in question. The certificate evidences discharge

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1 of any lien on any property given to secure the obligation
2 of the personal representative in lieu of bond or any surety,
3 but does not preclude action against the personal
4 representative or the surety.
5 Sec. 31008. NEW SECTION. SUBSEQUENT ADMINISTRATION.
6 If other property of the estate is discovered after an estate
7 has been settled and the personal representative discharged
8 or after one year after a closing statement has been filed,
9 the court upon petition of any interested person and upon
10 notice as it directs may appoint the same or a successor
11 personal representative to administer the subsequently
12 discovered estate. If a new appointment is made, unless the
13 court orders otherwise, the provisions of this Act apply as
14 appropriate; but no claim previously barred may be asserted
15 in the subsequent administration.
16 PART 11
17 COMPROMISE OF CONTROVERSIES
18 Sec. 31101. NEW SECTION. EFFECT OF APPROVAL OF AGREE-
19 MENTS INVOLVING TRUSTS, INALIENABLE INTERESTS, OR INTERESTS
20 OF THIRD PERSONS. A compromise of any controversy as to
21 admission to probate of any instrument offered for formal
22 probate as the will of a decedent, the construction, validity,
23 or effect of any probated will, the rights or interests in
24 the estate of the decedent, of any successor, or the
25 administration of the estate, if approved in a formal
26 proceeding in the court for that purpose, is binding on all
27 the parties thereto including those unborn, unascertained
28 or who could not be located. An approved compromise is binding
29 even though it may affect a trust or an inalienable interest.
30 A compromise does not impair the rights of creditors or of
31 taxing authorities who are not parties to it.
32 Sec. 31102. NEW SECTION. PROCEDURE FOR SECURING COURT
33 APPROVAL OF COMPROMISE. The procedure for securing court
34 approval of a compromise is as follows:
35 1. The terms of the compromise shall be set forth in an

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1 agreement in writing which shall be executed by all competent
2 persons and parents acting for any minor child having
3 beneficial interests or having claims which will or may be
4 affected by the compromise. Execution is not required by
5 any person whose identity cannot be ascertained or whose
6 whereabouts is unknown and cannot reasonably be ascertained.
7 2. Any interested person, including the personal repre-
8 sentative or a trustee, then may submit the agreement to the
9 court for its approval and for execution by the personal
10 representative, the trustee of every affected testamentary
11 trust, and other fiduciaries and representatives.
12 3. After notice to all interested persons or their repre-
13 sentatives, including the personal representative of the
14 estate and all affected trustees of trusts, the court, if
15 it finds that the contest or controversy is in good faith
16 and that the effect of the agreement upon the interests of
17 persons represented by fiduciaries or other representatives
18 is just and reasonable, shall make an order approving the
19 agreement and directing all fiduciaries under its supervision
20 to execute the agreement. Minor children represented only
21 by their parents may be bound only if their parents join with
22 other competent persons in execution of the compromise. Upon
23 the making of the order and the execution of the agreement,
24 all further disposition of the estate is in accordance with
25 the terms of the agreement.
26 PART 12
27 COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT
28 AND SUMMARY ADMINISTRATION PROCEDURE
29 FOR SMALL ESTATES
30 Sec. 31201. NEW SECTION. COLLECTION OF PERSONAL PROP-
31 ERTY BY AFFIDAVIT.
32 1. Thirty days after the death of a decedent, any per-
33 son indebted to the decedent or having possession of tangible
34 personal property or an instrument evidencing a debt, obli-
35 gation, stock or chose in action belonging to the decedent

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1 shall make payment of the indebtedness or deliver the tangible
2 personal property or an instrument evidencing a debt, obli-
3 gation, stock or chose in action to a person claiming to be
4 the successor of the decedent upon being presented an affidavit
5 made by or on behalf of the successor stating that:
6 a. The value of the entire estate, wherever located, less
7 liens and encumbrances, does not exceed five thousand dollars;
8 b. Thirty days have elapsed since the death of the dece-
9 dent;
10 c. No application or petition for the appointment of a
11 personal representative is pending or has been granted in
12 any jurisdiction; and
13 d. The claiming successor is entitled to payment or deli-
14 very of the property.
15 2. A transfer agent of any security shall change the
16 registered ownership on the books of a corporation from the
17 decedent to the successor or successors upon the presentation
18 of an affidavit as provided in subsection one (1) of this
19 section.
20 Sec. 31202. NEW SECTION. EFFECT OF AFFIDAVIT. The per-
21 son paying, delivering, transferring, or issuing personal
22 property or the evidence thereof pursuant to affidavit is
23 discharged and released to the same extent as if he dealt
24 with a personal representative of the decedent. He is not
25 required to see to the application of the personal property
26 or evidence thereof or to inquire into the truth of any
27 statement in the affidavit. If any person to whom an affidavit
28 is delivered refuses to pay, deliver, transfer, or issue any
29 personal property or evidence thereof, it may be recovered
30 or its payment, delivery, transfer, or issuance compelled
31 upon proof of their right in a proceeding brought for the
32 purpose by or on behalf of the persons entitled thereto.
33 Any person to whom payment, delivery, transfer or issuance
34 is made is answerable and accountable therefor to any personal
35 representative of the estate or to any other person having

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1 a superior right.
2 Sec. 31203. NEW SECTION. SMALL ESTATES; SUMMARY ADMINIS-
3 TRATIVE PROCEDURE. If it appears from the inventory and
4 appraisal that the value of the entire estate, less liens
5 and encumbrances, does not exceed homestead allowance, exempt
6 property, family allowance, costs and expenses of administra-
7 tion, reasonable funeral expenses, and reasonable and neces-
8 sary medical and hospital expenses of the last illness of
9 the decedent, the personal representative, without giving
10 notice to creditors, may immediately disburse and distribute
11 the estate to the persons entitled thereto and file a closing
12 statement as provided in section thirty-one thousand two
13 hundred four (31,204) of this Act.
14 Sec. 31204. NEW SECTION. SMALL ESTATES; CLOSING BY SWORN
15 STATEMENT OF PERSONAL REPRESENTATIVE.
16 1. Unless prohibited by order of the court and except
17 for estates being administered by supervised personal represen-
18 tatives, a personal representative may close an estate adminis-
19 tered under the summary procedures of section thirty-one
20 thousand two hundred three (31,203) of this Act by filing
21 with the court, at any time after disbursement and distribution
22 of the estate, a verified statement stating that:
23 a. To the best knowledge of the personal representative,
24 the value of the entire estate, less liens and encumbrances,
25 did not exceed homestead allowance, exempt property, family
26 allowance, costs and expenses of administration, reasonable
27 funeral expenses, and reasonable, necessary medical and
28 hospital expenses of the last illness of the decedent;
29 b. The personal representative has fully administered
30 the estate by disbursing and distributing it to the persons
31 entitled thereto; and
32 c. The personal representative has sent a copy of the
33 closing statement to all distributees of the estate and to
34 all creditors or other claimants of whom he is aware whose
35 claims are neither paid nor barred and has furnished a full

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1 account in writing of his administration to the distributees
2 whose interests are affected.
3 2. If no actions or proceedings involving the personal
4 representative are pending in the court one year after the
5 closing statement is filed, the appointment of the personal
6 representative terminates.
7 3. A closing statement filed under this section has the
8 same effect as one filed under section thirty-one thousand
9 four (31,004) of this Act.
10 ARTICLE IV
11 FOREIGN PERSONAL REPRESENTATIVES;
12 ANCILLARY ADMINISTRATION
13 PART 1
14 DEFINITIONS
15 Sec. 4101. NEW SECTION. DEFINITIONS. In this Article:
16 1. "Local administration" means administration by a
17 personal representative appointed in this state pursuant to
18 appointment proceedings described in Article III.
19 2. "Local personal representative" includes any personal
20 representative appointed in this state pursuant to appointment
21 proceedings described in Article III and excludes foreign
22 personal representatives who acquire the power of a local
23 personal representative pursuant to section four thousand
24 two hundred five (4205) of this Act.
25 3. "Resident creditor" means a person domiciled in, or
26 doing business in this state, who is, or could be, a claimant
27 against an estate of a non-resident decedent.
28 PART 2
29 POWERS OF FOREIGN PERSONAL REPRESENTATIVES
30 Sec. 4201. NEW SECTION. PAYMENT OF DEBT AND DELIVERY
31 OF PROPERTY TO DOMICILIARY FOREIGN PERSONAL REPRESENTATIVE
32 WITHOUT LOCAL ADMINISTRATION. At any time after the expiration
33 of sixty days from the death of a nonresident decedent, any
34 person indebted to the estate of the nonresident decedent
35 or having possession or control of personal property, or of

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1 an instrument evidencing a debt, obligation, stock or chose
2 in action belonging to the estate of the nonresident decedent
3 may pay the debt, deliver the personal property, or the
4 instrument evidencing the debt, obligation, stock or chose
5 in action, to the domiciliary foreign personal representative
6 of the nonresident decedent upon being presented with proof
7 of his appointment and an affidavit made by or on behalf of
8 the representative stating:
9 1. The date of the death of the nonresident decedent,
10 2. That no local administration, or application of petition
11 therefor, is pending in this state,
12 3. That the domiciliary foreign personal representative
13 is entitled to payment or delivery.
14 Sec. 4202. NEW SECTION. PAYMENT OR DELIVERY DISCHARGES.
15 Payment or delivery made in good faith on the basis of the
16 proof of authority and affidavit releases the debtor or person
17 having possession of the personal property to the same extent
18 as if payment or delivery had been made to a local personal
19 representative.
20 Sec. 4203. NEW SECTION. RESIDENT CREDITOR NOTICE. Pay-
21 ment or delivery under section four thousand two hundred one
22 (4201) of this Act may not be made if a resident creditor
23 of the nonresident decedent has notified the debtor of the
24 nonresident decedent or the person having possession of the
25 personal property belonging to the nonresident decedent that
26 the debt should not be paid nor the property delivered to
27 the domiciliary foreign personal representative.
28 Sec. 4204. NEW SECTION. PROOF OF AUTHORITY-BOND. If
29 no local administration or application or petition therefor
30 is pending in this state, a domiciliary foreign personal
31 representative may file with a court in this state in a county
32 in which property belonging to the decedent is located, authen-
33 ticated copies of his appointment and of any official bond
34 he has given.
35 Sec. 4205. NEW SECTION. POWERS. A domicilairy foreign

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1 personal representative who has complied with section four
2 thousand two hundred four (4204) of this Act may exercise
3 as to assets in this state all powers of a local personal
4 representative and may maintain actions and proceedings in
5 this state subject to any conditions imposed upon nonresident
6 parties generally.
7 Sec. 4206. NEW SECTION. POWER OF REPRESENATIVES IN
8 TRANSITION. The power of a domiciliary foreign personal
9 representative under section four thousand two hundred one
10 (4201) or four thousand two hundred five (4205) of this Act
11 shall be exercised only if there is no administration or
12 application therefor pending in this state. An application
13 or petition for local administration of the estate terminates
14 the power of the foreign personal representative to act under
15 section four thousand two hundred five (4205) of this Act,
16 but the local court may allow the foreign personal
17 representative to exercise limited powers to preserve the
18 estate. No person who, before receiving actual notice of
19 a pending local administration, has changed his position in
20 reliance upon the powers of a foreign personal representative
21 shall be prejudiced by reason of the application or petition
22 for, or grant of, local administration. The local personal
23 representative is subject to all duties and obligations which
24 have accrued by virtue of the exercise of the powers by the
25 foreign personal representative and may be substituted for
26 him in any action or proceedings in this state.
27 Sec. 4207. NEW SECTION. ANCILLARY AND OTHER LOCAL ADMINIS-
28 TRATIONS; PROVISIONS GOVERNING. In respect to a non-resident
29 decedent, the provisions of Article III of this Act govern
30 proceedings, if any, in a court of this state for probate
31 of the will, appointment, removal, supervision, and discharge
32 of the local personal representative, and any other order
33 concerning the estate; and the status, powers, duties and
34 liabilities of any local personal representative and the
35 rights of claimants, purchasers, distributees and others in

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1 regard to a local administration.

2 PART 3

3 JURISDICTION OVER FOREIGN REPRESENTATIVES

4 Sec. 4301. NEW SECTION. JURISDICTION BY ACT OF FOREIGN
5 PERSONAL REPRESENTATIVE. A foreign personal representative
6 submits himself to the jurisdiction of the courts of this
7 state by filing authenticated copies of his appointment as
8 provided in section four thousand two hundred four (4204)
9 of this Act, receiving payment of money or taking delivery
10 of personal property under section four thousand two hun-
11 dred one (4201) of this Act, or doing any act as a personal
12 representative in this state which would have given the state
13 jurisdiction over him as an individual. Jurisdiction by re-
14 ceiving payment or taking delivery of personal property is
15 limited to the money or value of personal property collected.

16 Sec. 4302. NEW SECTION. JURISDICTION BY ACT OF DECE-
17 DENT. In addition to jurisdiction conferred by section four
18 thousand three hundred one (4301) of this Act, a foreign per-
19 sonal representative is subject to the jurisdiction of the
20 courts of this state to the same extent that his decedent
21 was subject to jurisdiction immediately prior to death.

22 Sec. 4303. NEW SECTION. SERVICE ON FOREIGN PERSONAL
23 REPRESENTATIVE.

24 1. Service of process may be made upon the foreign per-
25 sonal representative by registered or certified mail, ad-
26 dressed to his last reasonably ascertainable address, re-
27 questing a return receipt signed by addressee only. Notice
28 by ordinary first class mail is sufficient if registered or
29 certified mail service to the addressee is unavailable. Ser-
30 vice may be made upon a foreign personal representative in
31 the manner in which service could have been made under other
32 laws of this state on either the foreign personal
33 representative or his decedent immediately prior to death.

34 2. If service is made upon a foreign personal represen-
35 tative as provided in subsection one (1) of this section,

1 he shall be allowed at least thirty days within which to
2 appear or respond.
3 PART 4
4 JUDGMENTS AND PERSONAL REPRESENTATIVE
5 Sec. 4401. NEW SECTION. EFFECT OF ADJUDICATION FOR OR
6 AGAINST PERSONAL REPRESENTATIVE. An adjudication rendered
7 in any jurisdiction in favor of or against any personal rep-
8 resentative of the estate is as binding on the local personal
9 representative as if he were a party to the adjudication.
10 ARTICLE V
11 PROTECTION OF PERSONS UNDER DISABILITY
12 AND THEIR PROPERTY
13 PART 1
14 GENERAL PROVISIONS
15 Sec. 5101. NEW SECTION. DEFINITIONS AND USE OF TERMS.
16 Unless otherwise apparent from the context, in this Act:
17 1. "Incapacitated person" means any person who is im-
18 paired by reason of mental illness, mental deficiency, phy-
19 sical illness or disability, advanced age, chronic use of
20 drugs, chronic intoxication, or other cause, except minority,
21 to the extent that he lacks sufficient understanding or ca-
22 pacity to make or communicate responsible decisions concern-
23 ing his person;
24 2. A "protective proceeding" is a proceeding under the
25 provisions of section five thousand four hundred one (5401)
26 of this Act to determine that a person cannot effectively
27 manage or apply his estate to necessary ends, either because
28 he lacks the ability or is otherwise inconvenienced, or be-
29 cause he is a minor, and to secure administration of his es-
30 tate by a conservator or other appropriate relief;
31 3. A "protected person" is a minor or other person for
32 whom a conservator has been appointed or other protective
33 order has been made;
34 4. A "ward" is a person for whom a guardian has been ap-
35 pointed. A "minor ward" is a minor for whom a guardian has

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1 been appointed solely because of minority.
2 Sec. 5102. NEW SECTION. JURISDICTION OF SUBJECT MATTER;
3 CONSOLIDATION OF PROCEEDINGS.
4 1. The court has jurisdiction over protective proceed-
5 ings and guardianship proceedings.
6 2. When both guardianship and protective proceedings as
7 to the same person are commenced or pending in the same court,
8 the proceedings may be consolidated.
9 Sec. 5103. NEW SECTION. FACILITY OF PAYMENT OR DELIVERY.
10 Any person under a duty to pay or deliver money or personal
11 property to a minor may perform this duty, in amounts not
12 exceeding five thousand dollars per annum, by paying or de-
13 livering the money or property to, the minor, if he has at-
14 tained the age of eighteen years or is married; any person
15 having the care and custody of the minor with whom the minor
16 resides; a guardian of the minor; or a financial institution
17 incident to a deposit in a federally insured savings account
18 in the sole name of the minor and giving notice of the de-
19 posit to the minor. This section does not apply if the per-
20 son making payment or delivery has actual knowledge that a
21 conservator has been appointed or proceedings for appoint-
22 ment of a conservator of the estate of the minor are pend-
23 ing. The persons, other than the minor or any financial in-
24 stitution, receiving money or property for a minor, are ob-
25 ligated to apply the money to the support and education of
26 the minor, but may not pay themselves except by way of reim-
27 bursement for out-of-pocket expenses for goods and services
28 necessary for the minor's support. Any excess sums shall
29 be preserved for future support of the minor and any balance
30 not so used and any property received for the minor must be
31 turned over to the minor when he attains majority. Persons
32 who pay or deliver in accordance with provisions of this sec-
33 tion are not responsible for the proper application thereof.
34 Sec. 5104. NEW SECTION. DELEGATION OF POWERS BY PARENT
35 OR GUARDIAN. A parent or a guardian of a minor or incapaci-

1 tated person, by a properly executed power of attorney, may
2 delegate to another person, for a period not exceeding six
3 months, any of his powers regarding care, custody, or prop-
4 erty of the minor child or ward, except his power to consent
5 to marriage or adoption of a minor ward.
6 PART 2
7 GUARDIANS OF MINORS
8 Sec. 5201. NEW SECTION. STATUS OF GUARDIAN OF MINOR;
9 GENERAL. A person becomes a guardian of a minor by accep-
10 tance of a testamentary appointment or upon appointment by
11 the court. The guardianship status continues until termi-
12 nated, without regard to the location from time to time of
13 the guardian and minor ward.
14 Sec. 5202. NEW SECTION. TESTAMENTARY APPOINTMENT OF
15 GUARDIAN OF MINOR. The parent of a minor may appoint by will
16 a guardian of an unmarried minor. Subject to the right of
17 the minor under section five thousand two hundred three (5203)
18 of this Act, a testamentary appointment becomes effective
19 upon filing the guardian's acceptance in the court in which
20 the will is probated, if before acceptance, both parents are
21 dead or the surviving parent is adjudged incapacitated. If
22 both parents are dead, an effective appointment by the parent
23 who died later has priority. This state recognizes a testa-
24 mentary appointment effected by filing the guardian's accep-
25 tance under a will probated in another state which is the
26 testator's domicile.
27 Sec. 5203. NEW SECTION. OBJECTION BY MINOR OF FOURTEEN
28 OR OLDER TO TESTAMENTARY APPOINTMENT. A minor of fourteen
29 or more years may prevent an appointment of his testamentary
30 guardian from becoming effective, or may cause a previously
31 accepted appointment to terminate, by filing with the court
32 in which the will is probated a written objection to the ap-
33 pointment before it is accepted or within thirty days after
34 its acceptance. An objection may be withdrawn. An objec-
35 tion does not preclude appointment by the court in a proper

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1 proceeding of the testamentary nominee, or any other suitable
2 person.
3 Sec. 5204. NEW SECTION. COURT APPOINTMENT OF GUARDIAN
4 OF MINOR; CONDITIONS FOR APPOINTMENT. The court may appoint
5 a guardian for an unmarried minor if all parental rights of
6 custody have been terminated or suspended by circumstances
7 or prior court order. A guardian appointed by will as pro-
8 vided in section five thousand two hundred two (5202) of this
9 Act whose appointment has not been prevented or nullified
10 under section five thousand two hundred three (5203) of this
11 Act has priority over any guardian who may be appointed by
12 the court but the court may proceed with an appointment upon
13 a finding that the testamentary guardian has failed to accept
14 the testamentary appointment within thirty days after notice
15 of the guardianship proceeding.
16 Sec. 5205. NEW SECTION. COURT APPOINTMENT OF GUARDIAN
17 OF MINOR; VENUE. The venue for guardianship proceedings for
18 a minor is in the place where the minor resides or is present.
19 Sec. 5206. NEW SECTION. COURT APPOINTMENT OF GUARDIAN
20 OF MINOR; QUALIFICATIONS; PRIORITY OF MINOR'S NOMINEE. The
21 court may appoint as guardian any person whose appointment
22 would be in the best interests of the minor. The court shall
23 appoint a person nominated by the minor, if the minor is four-
24 teen years of age or older, unless the court finds the ap-
25 pointment contrary to the best interests of the minor.
26 Sec. 5207. NEW SECTION. COURT APPOINTMENT OF GUARDIAN
27 OF MINOR; PROCEDURE.
28 1. Notice of the time and place of hearing of a petition
29 for the appointment of a guardian of a minor is to be given
30 by the petitioner in the manner prescribed by section one
31 thousand four hundred one (1401) of this Act to:
32 a. The minor, if he is fourteen or more years of age;
33 b. The person who has had the principal care and custody
34 of the minor during the sixty days preceding the date of the
35 petition; and

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1 c. Any living parent of the minor.
2 2. Upon hearing, if the court finds that a qualified per-
3 son seeks appointment, venue is proper, the required notices
4 have been given, the requirements of section five thousand
5 two hundred four (5204) of this Act have been met, and the
6 welfare and best interests of the minor will be served by
7 the requested appointment, it shall make the appointment.
8 In other cases the court may dismiss the proceedings, or make
9 any other disposition of the matter that will best serve the
10 interest of the minor.
11 3. If necessary, the court may appoint a temporary guard-
12 ian, with the status of an ordinary guardian of a minor, but
13 the authority of a temporary guardian shall not last longer
14 than six months.
15 4. If, at any time in the proceeding, the court deter-
16 mines that the interests of the minor are or may be inade-
17 quately represented, it may appoint an attorney to represent
18 the minor, giving consideration to the preference of the minor
19 if the minor is fourteen years of age or older.
20 Sec. 5208. NEW SECTION. CONSENT TO SERVICE BY ACCEP-
21 TANCE OF APPOINTMENT; NOTICE. By accepting a testamentary
22 or court appointment as guardian, a guardian submits per-
23 sonally to the jurisdiction of the court in any proceeding
24 relating to the guardianship that may be instituted by any
25 interested person. Notice of any proceeding shall be de-
26 livered to the guardian, or mailed to him by ordinary mail
27 at his address as listed in the court records and to his ad-
28 dress as then known to the petitioner. Letters of guardian-
29 ship must indicate whether the guardian was appointed by will
30 or by court order.
31 Sec. 5209. NEW SECTION. POWERS AND DUTIES OF GUARDIAN
32 OF MINOR. A guardian of a minor has the powers and respon-
33 sibilities of a parent who has not been deprived of custody
34 of his minor and unemancipated child, except that a guardian
35 is not legally obligated to provide from his own funds for

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1 the ward and is not liable to third persons by reason of the
2 parental relationship for acts of the ward. In particular,
3 and without qualifying the foregoing, a guardian has the fol-
4 lowing powers and duties:
5 1. He must take reasonable care of his ward's personal
6 effects and commence protective proceedings if necessary to
7 protect other property of the ward.
8 2. He may receive money payable for the support of the
9 ward to the ward's parent, guardian or custodian under the
10 terms of any statutory benefit or insurance system, or any
11 private contract, devise, trust, conservatorship or custo-
12 dianship. He may also receive money or property of the ward
13 paid or delivered by virtue of section five thousand one hun-
14 dred three (5103) of this Act. Any sums so received shall
15 be applied to the ward's current needs for support, care and
16 education. He must exercise due care to conserve any excess
17 for the ward's future needs unless a conservator has been
18 appointed for the estate of the ward, in which case excess
19 shall be paid over at least annually to the conservator.
20 Sums so received by the guardian are not to be used for com-
21 pensation for his services except as approved by order of
22 court or as determined by a duly appointed conservator other
23 than the guardian. A guardian may institute proceedings to
24 compel the performance by any person of a duty to support
25 the ward or to pay sums for the welfare of the ward.
26 3. The guardian is empowered to facilitate the ward's
27 education, social, or other activities and to authorize medi-
28 cal or other professional care, treatment, or advice. A
29 guardian is not liable by reason of this consent for injury
30 to the ward resulting from the negligence or acts of third
31 persons unless it would have been illegal for a parent to
32 have consented. A guardian may consent to the marriage or
33 adoption of his ward.
34 4. A guardian must report the condition of his ward and
35 of the ward's estate which has been subject to his possession

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1 or control, as ordered by court on petition of any person
2 interested in the minor's welfare or as required by court
3 rule.
4 Sec. 5210. NEW SECTION. TERMINATION OF APPOINTMENT OF
5 GUARDIAN; GENERAL. A guardian's authority and responsibility
6 terminates upon the death, resignation or removal of the guar-
7 dian or upon the minor's death, adoption, marriage or attain-
8 ment of majority, but termination does not affect his lia-
9 bility for prior acts, nor his obligation to account for funds
10 and assets of his ward. Resignation of a guardian does not
11 terminate the guardianship until it has been approved by the
12 court. A testamentary appointment under an informally pro-
13 bated will terminates if the will is later denied probate
14 in a formal proceeding.
15 Sec. 5211. NEW SECTION. PROCEEDINGS SUBSEQUENT TO AP-
16 POINTMENT; VENUE.
17 1. The court where the ward resides has concurrent juris-
18 diction with the court which appointed the guardian, or in
19 which acceptance of a testamentary appointment was filed,
20 over resignation, removal, accounting and other proceedings
21 relating to the guardianship.
22 2. If the court located where the ward resides is not
23 the court in which acceptance of appointment is filed, the
24 court in which proceedings subsequent to appointment are com-
25 menced shall in all appropriate cases notify the other court,
26 in this or another state, and after consultation with that
27 court determine whether to retain jurisdiction or transfer
28 the proceedings to the other court, whichever is in the best
29 interest of the ward. A copy of any order accepting a resig-
30 nation or removing a guardian shall be sent to the court in
31 which acceptance of appointment is filed.
32 Sec. 5212. NEW SECTION. RESIGNATION OR REMOVAL PROCEED-
33 INGS.
34 1. Any person interested in the welfare of a ward, or
35 the ward, if fourteen or more years of age, may petition for

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1 removal of a guardian on the ground that removal would be
2 in the best interest of the ward. A guardian may petition
3 for permission to resign. A petition for removal or for per-
4 mission to resign may, but need not, include a request for
5 appointment of a successor guardian.
6 2. After notice and hearing on a petition for removal
7 or for permission to resign, the court may terminate the
8 guardianship and make any further order that may be appro-
9 priate.
10 3. If, at any time in the proceeding, the court deter-
11 mines that the interests of the ward are, or may be, inade-
12 quately represented, it may appoint an attorney to represent
13 the minor, giving consideration to the preference of the minor
14 if the minor is fourteen or more years of age.
15 PART 3
16 GUARDIANS OF INCAPACITATED PERSONS
17 Sec. 5301. NEW SECTION. TESTAMENTARY APPOINTMENT OF
18 GUARDIAN FOR INCAPACITATED PERSON.
19 1. The parent of an incapacitated person may by will ap-
20 point a guardian of the incapacitated person. A testamentary
21 appointment by a parent becomes effective when, after having
22 given seven days prior written notice of his intention to
23 do so to the incapacitated person and to the person having
24 his care or to his nearest adult relative, the guardian files
25 acceptance of appointment in the court in which the will is
26 informally or formally probated, if prior thereto, both par-
27 ents are dead or the surviving parent is adjudged incapaci-
28 tated. If both parents are dead, an effective appointment
29 by the parent who died later has priority unless it is ter-
30 minated by the denial of probate in formal proceedings.
31 2. The spouse of a married incapacitated person may by
32 will appoint a guardian of the incapacitated person. The
33 appointment becomes effective when, after having given seven
34 days prior written notice of his intention to do so to the
35 incapacitated person and to the person having his care or

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1 to his nearest adult relative, the guardian files acceptance
2 of appointment in the court in which the will is informally
3 or formally probated. An effective appointment by a spouse
4 has priority over an appointment by a parent unless it is
5 terminated by the denial of probate in formal proceedings.
6 3. This state shall recognize a testamentary appoint-
7 ment effected by filing acceptance under a will probated at
8 the testator's domicile in another state.
9 4. On the filing with the court in which the will was
10 probated of written objection to the appointment by the per-
11 son for whom a testamentary appointment of guardian has been
12 made, the appointment is terminated. An objection does not
13 prevent appointment by the court in a proper proceeding of
14 the testamentary nominee or any other suitable person upon
15 an adjudication of incapacity in proceedings under the suc-
16 ceeding sections of this Part.
17 Sec. 5302. NEW SECTION. VENUE. The venue for guardian-
18 ship proceedings for an incapacitated person is in the place
19 where the incapacitated person resides or is present. If
20 the incapacitated person is admitted to an institution pur-
21 suant to order of a court of competent jurisdiction, venue
22 is also in the county in which that court sits.
23 Sec. 5303. NEW SECTION. PROCEDURE FOR COURT APPOINT-
24 MENT OF A GUARDIAN OF AN INCAPACITATED PERSON.
25 1. The incapacitated person or any person interested in
26 his welfare may petition for a finding of incapacity and ap-
27 pointment of a guardian.
28 2. Upon the filing of a petition, the court shall set
29 a date for hearing on the issues of incapacity and unless
30 the allegedly incapacitated person has counsel of his own
31 choice, it shall appoint an appropriate official or attor-
32 ney to represent him in the proceeding, who shall have the
33 powers and duties of a guardian ad litem. The person al-
34 leged to be incapacitated shall be examined by a physician
35 appointed by the court who shall submit his report in writ-

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1 ing to the court and be interviewed by a visitor sent by the
2 court. The visitor also shall interview the person seeking
3 appointment as guardian, and visit the present place of abode
4 of the person alleged to be incapacitated and the place it
5 is proposed that he will be detained or reside if the re-
6 quested appointment is made and submit his report in writing
7 to the court. The person alleged to be incapacitated is en-
8 titled to be present at the hearing in person, and to see
9 or hear all evidence bearing upon his condition. He is en-
10 titled to be present by counsel, to present evidence, to
11 cross-examine witnesses, including the court-appointed physi-
12 cian and the visitor, and to trial by jury. The issue may
13 be determined at a closed hearing without a jury if the per-
14 son alleged to be incapacitated or his counsel so requests.
15 Sec. 5304. NEW SECTION. FINDINGS; ORDER OF APPOINTMENT.
16 The court may appoint a guardian as requested if it is satis-
17 fied that the person for whom a guardian is sought is inca-
18 pacitated and that the appointment is necessary or desirable
19 as a means of providing continuing care and supervision of
20 the person of the incapacitated person. Alternatively, the
21 court may dismiss the proceeding or enter any other appro-
22 priate order.
23 Sec. 5305. NEW SECTION. ACCEPTANCE OF APPOINTMENT; CON-
24 SENT TO JURISDICTION. By accepting appointment, a guardian
25 submits personally to the jurisdiction of the court in any
26 proceeding relating to the guardianship that may be insti-
27 tuted by any interested person. Notice of any proceeding
28 shall be delivered to the guardian or mailed to him by or-
29 dinary mail at his address as listed in the court records
30 and to his address as then known to the petitioner.
31 Sec. 5306. NEW SECTION. TERMINATION OF GUARDIANSHIP FOR
32 INCAPACITATED PERSON. The authority and responsibility of
33 a guardian for an incapacitated person terminates upon the
34 death of the guardian or ward, the determination of incapa-
35 city of the guardian, or upon removal or resignation as pro-

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1 vided in section five thousand three hundred seven (5307)
2 of this Act. Testamentary appointment under an informally
3 probated will terminates if the will is later denied probate
4 in a formal proceeding.
5 Sec. 5307. NEW SECTION. REMOVAL OR RESIGNATION OF GUAR-
6 DIAN; TERMINATION OF INCAPACITY.
7 1. On petition of the ward or any person interested in
8 his welfare, the court may remove a guardian and appoint a
9 successor if in the best interests of the ward. On peti-
10 tion of the guardian, the court may accept his resignation
11 and make any other order which may be appropriate.
12 2. An order adjudicating incapacity may specify a mini-
13 mum period, not exceeding one year, during which no petition
14 for an adjudication that the ward is no longer incapacitated
15 may be filed without special leave. Subject to this restric-
16 tion, the ward or any person interested in his welfare may
17 petition for an order that he is no longer incapacitated,
18 and for removal or resignation of the guardian. A request
19 for this order may be made by informal letter to the court
20 or judge and any person who knowingly interferes with trans-
21 mission of this kind of request to the court or judge may
22 be adjudged guilty of contempt of court.
23 3. Before removing a guardian, accepting the resignation
24 of a guardian, or ordering that a ward's incapacity has ter-
25 minated, the court, following the same procedures to safe-
26 guard the rights of the ward as apply to a petition for ap-
27 pointment of a guardian, may send a visitor to the residence
28 of the present guardian and to the place where the ward re-
29 sides or is detained, to observe conditions and report in
30 writing to the court.
31 Sec. 5308. NEW SECTION. VISITOR IN GUARDIANSHIP PRO-
32 CEEDING. A visitor is, with respect to guardianship pro-
33 ceedings, a person who is trained in law, nursing or social
34 work and is an officer, employee or special appointee of the
35 court with no personal interest in the proceedings.

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1 Sec. 5309. NEW SECTION. NOTICES IN GUARDIANSHIP PRO-
2 CEEDINGS.
3 1. In a proceeding for the appointment or removal of a
4 guardian of an incapacitated person other than the appoint-
5 ment of a temporary guardian or temporary suspension of a
6 guardian, notice of hearing shall be given to each of the
7 following:
8 a. The ward or the person alleged to be incapacitated
9 and his spouse, parents and adult children;
10 b. Any person who is serving as his guardian, conserva-
11 tor or who has his care and custody; and
12 c. In case no other person is notified under paragraph
13 a of this subsection, at least one of his closest adult rela-
14 tives, if any can be found.
15 2. Notice shall be served personally on the alleged in-
16 capacitated person, and his spouse and parents if they can
17 be found within the state. Notice to the spouse and parents,
18 if they cannot be found within the state, and to all other
19 persons except the alleged incapacitated person shall be given
20 as provided in section one thousand four hundred one (1401)
21 of this Act. Waiver of notice by the person alleged to be
22 incapacitated is not effective unless he attends the hearing
23 or his waiver of notice is confirmed in an interview with
24 the visitor. Representation of the alleged incapacitated
25 person by a guardian ad litem is not necessary.
26 Sec. 5310. NEW SECTION. TEMPORARY GUARDIANS. If an
27 incapacitated person has no guardian and an emergency exists,
28 the court may exercise the power of a guardian pending no-
29 tice and hearing. If an appointed guardian is not effectively
30 performing his duties and the court further finds that the
31 welfare of the incapacitated person requires immediate ac-
32 tion, it may, with or without notice, appoint a temporary
33 guardian for the incapacitated person for a specified period
34 not to exceed six months. A temporary guardian is entitled
35 to the care and custody of the ward and the authority of any

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1 permanent guardian previously appointed by the court is sus-
2 pended so long as a temporary guardian has authority. A tem-
3 porary guardian may be removed at any time. A temporary
4 guardian shall make any report the court requires. In other
5 respects the provisions of this Act concerning guardians ap-
6 ply to temporary guardians.
7 Sec. 5311. NEW SECTION. WHO MAY BE GUARDIAN; PRIORITIES.
8 1. Any competent person or a suitable institution may
9 be appointed guardian of an incapacited person.
10 2. Persons who are not disqualified have priority for
11 appointment as guardian in the following order:
12 a. The spouse of the incapacitated person;
13 b. An adult child of the incapacitated person;
14 c. A parent of the incapacitated person, including a per-
15 son nominated by will or other writing signed by a deceased
16 parent;
17 d. Any relative of the incapacitated person with whom
18 he has resided for more than six months prior to the filing
19 of the petition;
20 e. A person nominated by the person who is caring for
21 him or paying benefits to him.
22 Sec. 5312. NEW SECTION. GENERAL POWERS AND DUTIES OF
23 GUARDIAN.
24 1. A guardian of an incapacitated person has the same
25 powers, rights and duties respecting his ward that a parent
26 has respecting his unemancipated minor child except that a
27 guardian is not liable to third persons for acts of the ward
28 solely by reason of the parental relationship. In particu-
29 lar, and without qualifying the foregoing, a guardian has
30 the following powers and duties, except as modified by order
31 of the court:
32 a. To the extent that it is consistent with the terms
33 of any order by a court of competent jurisdiction relating
34 to detention or commitment of the ward, he is entitled to
35 custody of the person of his ward and may establish the ward's

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1 place of abode within or without this state.
2 b. If entitled to custody of his ward he shall make pro-
3 vision for the care, comfort and maintenance of his ward and,
4 whenever appropriate, arrange for his training and education.
5 Without regard to custodial rights of the ward's person, he
6 shall take reasonable care of his ward's clothing, furniture,
7 vehicles and other personal effects and commence protective
8 proceedings if other property of his ward is in need of pro-
9 tection.
10 c. A guardian may give any consents or approvals that
11 may be necessary to enable the ward to receive medical or
12 other professional care, counsel, treatment or service.
13 d. If no conservator for the estate of the ward has been
14 appointed, he may:
15 (1) Institute proceedings to compel any person under a
16 duty to support the ward or to pay sums for the welfare of
17 the ward to perform his duty;
18 (2) Receive money and tangible property deliverable to
19 the ward and apply the money and property for support, care
20 and education of the ward; but, he may not use funds from
21 his ward's estate for room and board which he, his spouse,
22 parent, or child have furnished the ward unless a charge for
23 the service is approved by order of the court made upon no-
24 tice to at least one of the next of kin of the incompetent
25 ward, if notice is possible. He must exercise care to con-
26 serve any excess for the ward's needs.
27 e. A guardian is required to report the condition of his
28 ward and of the estate which has been subject to his posses-
29 sion or control, as required by the court or court rule.
30 f. If a conservator has been appointed, all of the ward's
31 estate received by the guardian in excess of those funds ex-
32 pended to meet current expenses for support, care, and edu-
33 cation of the ward must be paid to the conservator for man-
34 agement as provided in this Act, and the guardian must ac-
35 count to the conservator for funds expended.

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1 2. Any guardian of one for whom a conservator also has
2 been appointed shall control the custody and care of the ward,
3 and is entitled to receive reasonable sums for his services
4 and for room and board furnished to the ward as agreed upon
5 between him and the conservator, provided the amounts agreed
6 upon are reasonable under the circumstances. The guardian
7 may request the conservator to expend the ward's estate by
8 payment to third persons or institutions for the ward's care
9 and maintenance.
10 Sec. 5313. NEW SECTION. PROCEEDINGS SUBSEQUENT TO AP-
11 POINTMENT; VENUE.
12 1. The court where the ward resides has concurrent jur-
13 isdiction with the court which appointed the guardian, or
14 in which acceptance of a testamentary appointment was filed,
15 over resignation, removal, accounting and other proceedings
16 relating to the guardianship.
17 2. If the court located where the ward resides is not
18 the court in which acceptance of appointment is filed, the
19 court in which proceedings subsequent to appointment are com-
20 menced shall in all appropriate cases notify the other court,
21 in this or another state, and after consultation with that
22 court determine whether to retain jurisdiction or transfer
23 the proceedings to the other court, whichever may be in the
24 best interest of the ward. A copy of any order accepting
25 a resignation or removing a guardian shall be sent to the
26 court in which acceptance of appointment is filed.
27 PART 4
28 PROTECTION OF PROPERTY OF PERSONS UNDER
29 DISABILITY AND MINORS
30 Sec. 5401. NEW SECTION. PROTECTIVE PROCEEDINGS. Upon
31 petition and after notice and hearing in accordance with the
32 provisions of this Part, the court may appoint a conservator
33 or make other protective order for cause as follows:
34 1. Appointment of a conservator or other protective or-
35 der may be made in relation to the estate and affairs of a

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1 minor if the court determines that a minor owns money or
2 property that requires management or protection which can-
3 not otherwise be provided, has or may have business affairs
4 which may be jeopardized or prevented by his minority, or
5 that funds are needed for his support and education and that
6 protection is necessary or desirable to obtain or provide
7 funds.
8 2. Appointment of a conservator or other protective or-
9 der may be made in relation to the estate and affairs of a
10 person if the court determines that the person is unable to
11 manage his property and affairs effectively for reasons such
12 as mental illness, mental deficiency, physical illness or
13 disability, advanced age, chronic use of drugs, chronic in-
14 toxication, confinement, detention by a foreign power, or
15 disappearance; and the person has property which will be
16 wasted or dissipated unless proper management is provided,
17 or that funds are needed for the support, care and welfare
18 of the person or those entitled to be supported by him and
19 that protection is necessary or desirable to obtain or pro-
20 vide funds.
21 Sec. 5402. NEW SECTION. PROTECTIVE PROCEEDINGS; JURIS-
22 DICTION OF AFFAIRS OF PROTECTED PERSONS. After the service
23 of notice in a proceeding seeking the appointment of a con-
24 servator or other protective order and until termination of
25 the proceeding, the court in which the petition is filed has:
26 1. Exclusive jurisdiction to determine the need for a
27 conservator or other protective order until the proceedings
28 are terminated;
29 2. Exclusive jurisdiction to determine how the estate
30 of the protected person which is subject to the laws of this
31 state shall be managed, expended or distributed to or for
32 the use of the protected person or any of his dependents;
33 3. Concurrent jurisdiction to determine the validity of
34 claims against the person or estate of the protected person
35 and his title to any property or claim.

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1 Sec. 5403. NEW SECTION. VENUE. Venue for proceedings
2 under this Part is:
3 1. In the place in this state where the person to be pro-
4 tected resides whether or not a guardian has been appointed
5 in another place; or
6 2. If the person to be protected does not reside in this
7 state, in any place where he has property.
8 Sec. 5404. NEW SECTION. ORIGINAL PETITION FOR APPOINT-
9 MENT OR PROTECTIVE ORDER.
10 1. The person to be protected, any person who is inter-
11 ested in his estate, affairs or welfare including his parent,
12 guardian, or custodian, or any person who would be adversely
13 affected by lack of effective management of his property and
14 affairs may petition for the appointment of a conservator
15 or for other appropriate protective order.
16 2. The petition shall set forth to the extent known, the
17 interest of the petitioner; the name, age, residence and
18 address of the person to be protected; the name and address
19 of his guardian, if any; the name and address of his nearest
20 relative known to the petitioner; a general statement of his
21 property with an estimate of the value thereof, including
22 any compensation, insurance, pension or allowance to which
23 he is entitled; and the reason why appointment of a conser-
24 vator or other protective order is necessary. If the ap-
25 pointment of a conservator is requested, the petition also
26 shall set forth the name and address of the person whose ap-
27 pointment is sought and the basis of his priority for ap-
28 pointment.
29 Sec. 5405. NEW SECTION. NOTICE.
30 1. On a petition for appointment of a conservator or other
31 protective order, the person to be protected and his spouse
32 or, if none, his parents, must be served personally with no-
33 tice of the proceeding at least fourteen days before the date
34 of hearing if they can be found within the state, or, if they
35 cannot be found within the state, they must be given notice

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1 in accordance with section one thousand four hundred one
2 (1401) of this Act. Waiver by the person to be protected
3 is not effective unless he attends the hearing or, unless
4 minority is the reason for the proceeding, waiver is confirmed
5 in an interview with the visitor.
6 2. Notice of a petition for appointment of a conservator
7 or other initial protective order, and of any subsequent hear-
8 ing, must be given to any person who has filed a request for
9 notice under section five thousand four hundred six (5406)
10 of this Act and to interested persons and other persons as
11 the court may direct. Except as otherwise provided in sub-
12 section one (1) of this section, notice shall be given in
13 accordance with section one thousand four hundred one (1401)
14 of this Act.
15 Sec. 5406. NEW SECTION. PROTECTIVE PROCEEDINGS; REQUEST
16 FOR NOTICE; INTERESTED PERSON. Any interested person who
17 desires to be notified before any order is made in a protec-
18 tive proceeding may file with the registrar a request for
19 notice subsequent to payment of any fee required by statute
20 or court rule. The clerk shall mail a copy of the demand
21 to the conservator if one has been appointed. A request is
22 not effective unless it contains a statement showing the in-
23 terest of the person making it and his address, or that of
24 his attorney, and is effective only as to matters occurring
25 after the filing. Any governmental agency paying or plan-
26 ning to pay benefits to the person to be protected is an in-
27 terested person in protective proceedings.
28 Sec. 5407. NEW SECTION. PROCEDURE CONCERNING HEARING
29 AND ORDER ON ORIGINAL PETITION.
30 1. Upon receipt of a petition for appointment of a con-
31 servator or other protective order because of minority, the
32 court shall set a date for hearing on the matters alleged
33 in the petition. If, at any time in the proceeding, the court
34 determines that the interests of the minor are or may be in-
35 adequately represented, it may appoint an attorney to repre-

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1 sent the minor, giving consideration to the choice of the
2 minor if fourteen years of age or older. A lawyer appointed
3 by the court to represent a minor has the powers and duties
4 of a guardian ad litem. After hearing, upon finding that
5 a basis for the appointment of a conservator or other pro-
6 tective order has been established, the court shall make an
7 appointment or other appropriate protective order.
8 2. Upon receipt of a petition for appointment of a con-
9 servator or other protective order for reasons other than
10 minority, the court shall set a date for hearing.
11 3. Unless the person to be protected has counsel of his
12 own choice, the court must appoint a lawyer to represent him
13 who then has the powers and duties of a guardian ad litem.
14 If the alleged disability is mental illness, mental defi-
15 ciency, physical illness or disability, advanced age, chronic
16 use of drugs, or chronic intoxication, the court may direct
17 that the person to be protected be examined by a physician
18 designated by the court, preferably a physician who is not
19 connected with any institution in which the person is a pa-
20 tient or is detained. The court may send a visitor to in-
21 terview the person to be protected. The visitor may be a
22 guardian ad litem or an officer or employee of the court.
23 Sec. 5408. NEW SECTION. PERMISSIBLE COURT ORDERS. The
24 court has the following powers which may be exercised di-
25 rectly or through a conservator in respect to the estate and
26 affairs of protected persons;
27 1. While a petition for appointment of a conservator or
28 other protective order is pending and after preliminary hear-
29 ing and without notice to others, the court has power to pre-
30 serve and apply the property of the person to be protected
31 as may be required for his benefit or the benefit of his de-
32 pendents.
33 2. After hearing and upon determining that a basis for
34 an appointment or other protective order exists with respect
35 to a minor without other disability, the court has all those

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1 powers over the estate and affairs of the minor which are
2 or might be necessary for the best interests of the minor,
3 his family and members of his household.
4 3. After hearing and upon determining that a basis for
5 an appointment or other protective order exists with respect
6 to a person for reasons other than minority, the court has,
7 for the benefit of the person and members of his household,
8 all the powers over his estate and affairs which he could
9 exercise if present and not under disability, except the power
10 to make a will. These powers include, but are not limited
11 to power to make gifts, to convey or relase his contingent
12 and expectant interests in property including marital property
13 rights and any right of survivorship incident to joint tenancy
14 or tenancy by the entirety, to exercise or release his powers
15 as trustee, personal representative, custodian for minors,
16 conservator, or donee of a power of appointment, to enter
17 into contracts, to create revocable or irrevocable trusts
18 of property of the estate which may extend beyond his
19 disability or life, to exercise options of the disabled person
20 to purchase securities or other property, to exercise his
21 rights to elect options and change beneficiaries under
22 insurance and annuity policies and to surrender the policies
23 for their cash value, to exercise his right to an elective
24 share in the estate of his deceased spouse and to renounce
25 any interest by testate or intestate succession or by inter
26 vivos transfer.
27 4. The court may exercise or direct the exercise of, its
28 authority to exercise or release powers of appointment of
29 which the protected person is donee, to renounce interests,
30 to make gifts in trust or otherwise exceeding twenty percent
31 of any year's income of the estate or to change beneficiaries
32 under insurance and annuity policies, only if satisfied, after
33 notice and hearing, that it is in the best interests of the
34 protected person, and that he either is incapable of consent-
35 ing or has consented to the proposed exercise of power.

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1 5. An order made pursuant to this section determining
2 that a basis for appointment of a conservator or other pro-
3 tective order exists, has no effect on the capacity of the
4 protected person.
5 Sec. 5409. NEW SECTION. PROTECTIVE ARRANGEMENTS AND
6 SINGLE TRANSACTIONS AUTHORIZED.
7 1. If it is established in a proper proceeding that a
8 basis exists as described in section five thousand four hun-
9 dred one (5401) of this Act for affecting the property and
10 affairs of a person the court, without appointing a conser-
11 vator, may authorize, direct or ratify any transaction nec-
12 essary or desirable to achieve any security, service, or care
13 arrangement meeting the foreseeable needs of the protected
14 person. Protective arrangements include, but are not limited
15 to, payment, delivery, deposit or retention of funds or prop-
16 erty, sale, mortgage, lease or other transfer of property,
17 entry into an annuity contract, a contract for life care,
18 a deposit contract, a contract for training and education,
19 or addition to or establishment of a suitable trust.
20 2. When it has been established in a proper proceeding
21 that a basis exists as described in section five thousand
22 four hundred one (5401) of this Act for affecting the prop-
23 erty and affairs of a person the court, without appointing
24 a conservator, may authorize, direct or ratify any contract,
25 trust or other transaction relating to the protected person's
26 financial affairs or involving his estate if the court de-
27 termines that the transaction is in the best interests of
28 the protected person.
29 3. Before approving a protective arrangement or other
30 transaction under this section, the court shall consider the
31 interests of creditors and dependents of the protected per-
32 son and, in view of his disability, whether the protected
33 person needs the continuing protection of a conservator.
34 The court may appoint a special conservator to assist in the
35 accomplishment of any protective arrangement or other trans-

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1 action authorized under this section who shall have the
2 authority conferred by the order and serve until discharged
3 by order after report to the court of all matters done pur-
4 suant to the order of appointment.
5 Sec. 5410. NEW SECTION. WHO MAY BE APPOINTED CONSERVATOR;
6 PRIORITIES.
7 1. The court may appoint an individual, or a corporation
8 with general power to serve as trustee, as conservator of
9 the estate of a protected person. The following are entitled
10 to consideration for appointment in the order listed:
11 a. A conservator, guardian of property or other like fi-
12 duciary appointed or recognized by the appropriate court of
13 any other jurisdiction in which the protected person resides;
14 b. An individual or corporation nominated by the pro-
15 tected person if he is fourteen or more years of age and has,
16 in the opinion of the court, sufficient mental capacity to
17 make an intelligent choice;
18 c. The spouse of the protected person;
19 d. An adult child of the protected person;
20 e. A parent of the protected person, or a person nomi-
21 nated by the will of a deceased parent;
22 f. Any relative of the protected person with whom he has
23 resided for more than six months prior to the filing of the
24 petition;
25 g. A person nominated by the person who is caring for
26 him or paying benefits to him.
27 2. A person in priorities paragraphs a, c, d, e, or f
28 of subsection one (1) of this section may nominate in writ-
29 ing a person to serve in his stead. With respect to persons
30 having equal priority, the court is to select the one who
31 is best qualified to those willing to serve. The court, for
32 good cause, may pass over a person having priority and ap-
33 point a person having less priority or no priority.
34 Sec. 5411. NEW SECTION. BOND. The court may require
35 a conservator to furnish a bond conditioned upon faithful

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1 discharge of all duties of the trust according to law, with
2 sureties as it shall specify. Unless otherwise directed,
3 the bond shall be in the amount of the aggregate capital value
4 of the property of the estate in his control plus one year's
5 estimated income minus the value of securities deposited under
6 arrangements requiring an order of the court for their removal
7 and the value of any land which the fiduciary, by express
8 limitation of power, lacks power to sell or convey without
9 court authorization. The court in lieu of sureties on a bond,
10 may accept other security for the performance of the bond,
11 including a pledge of securities or a mortgage of land.
12 Sec. 5412. NEW SECTION. TERMS AND REQUIREMENTS OF BONDS.
13 1. The following requirements and provisions apply to
14 any bond required under section five thousand four hundred
15 eleven (5411) of this Act:
16 a. Unless otherwise provided by the terms of the approved
17 bond, sureties are jointly and severally liable with the con-
18 servator and with each other;
19 b. By executing an approved bond of a conservator, the
20 surety consents to the jurisdiction of the court which is-
21 sued letters to the primary obligor in any proceeding per-
22 taining to the fiduciary duties of the conservator and nam-
23 ing the surety as a party defendant. Notice of any proceed-
24 ing shall be delivered to the surety or mailed to him by
25 registered or certified mail at his address as listed with
26 the court where the bond is filed and to his address as then
27 known to the petitioner;
28 c. On petition of a successor conservator or any inter-
29 ested person, a proceeding may be initiated against a surety
30 for breach of the obligation of the bond of the conservator;
31 d. The bond of the conservator is not void after the first
32 recovery but may be proceeded against from time to time un-
33 til the whole penalty is exhausted.
34 2. No proceeding may be commenced against the surety on
35 any matter as to which an action or proceeding against the

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1 primary obligor is barred by adjudication or limitation.
2 Sec. 5413. NEW SECTION. ACCEPTANCE OF APPOINTMENT; CON-
3 SENT TO JURISDICTION. By accepting appointment, a conser-
4 vator submits personally to the jurisdiction of the court
5 in any proceeding relating to the estate that may be insti-
6 tuted by any interested person. Notice of any proceeding
7 shall be delivered to the conservator, or mailed to him by
8 registered or certified mail at his address as listed in the
9 petition for appointment or as thereafter reported to the
10 court and to his address as then known to the petitioner.
11 Sec. 5414. NEW SECTION. COMPENSATION AND EXPENSES. If
12 not otherwise compensated for services rendered, any visitor,
13 lawyer, physician, conservator or special conservator ap-
14 pointed in a protective proceeding is entitled to reasonable
15 compensation from the estate.
16 Sec. 5415. NEW SECTION. DEATH, RESIGNATION OR REMOVAL
17 OF CONSERVATOR. The court may remove a conservator for good
18 cause, upon notice and hearing, or accept the resignation
19 of a conservator. After his death, resignation or removal,
20 the court may appoint another conservator. A conservator
21 so appointed succeeds to the title and powers of his prede-
22 cessor.
23 Sec. 5416. NEW SECTION. PETITIONS FOR ORDERS SUBSEQUENT
24 TO APPOINTMENT.
25 1. Any person interested in the welfare of a person for
26 whom a conservator has been appointed may file a petition
27 in the appointing court for an order (1) requiring bond or
28 security or additional bond or security, or reducing bond,
29 (2) requiring an accounting for the administration of the
30 trust, (3) directing distribution, (4) removing the conser-
31 vator and appointing a temporary or successor conservator,
32 or (5) granting other appropriate relief.
33 2. A conservator may petition the appointing court for
34 instructions concerning his fiduciary responsibility.
35 3. Upon notice and hearing, the court may give appro-

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1 priate instructions or make any appropriate order.
2 Sec. 5417. NEW SECTION. GENERAL DUTY OF CONSERVATOR.
3 In the exercise of his powers, a conservator is to act as
4 a fiduciary and shall observe the standards of care applic-
5 able to trustees as described by section seven thousand three
6 hundred two (7302) of this Act.
7 Sec. 5418. NEW SECTION. INVENTORY AND RECORDS. Within
8 ninety days after his appointment, every conservator shall
9 prepare and file with the appointing court a complete inven-
10 tory of the estate of the protected person together with his
11 oath or affirmation that it is complete and accurate so far
12 as he is informed. The conservator shall provide a copy
13 thereof to the protected person if he can be located, has
14 attained the age of fourteen years, and has sufficient men-
15 tal capacity to understand these matters, and to any parent
16 or guardian with whom the protected person resides. The con-
17 servator shall keep suitable records of his administration
18 and exhibit the same on request of any interested person.
19 Sec. 5419. NEW SECTION. ACCOUNTS. Every conservator
20 must account to the court for his administration of the trust
21 upon his resignation or removal, and at other times as the
22 court may direct. On termination of the protected person's
23 minority or disability, a conservator may account to the
24 court, or he may account to the former protected person or
25 his personal representative. Subject to appeal or vacation
26 within the time permitted, an order, made upon notice and
27 hearing, allowing an intermediate account of a conservator,
28 adjudicates as to his liabilities concerning the matters
29 considered in connection therewith; and an order, made upon
30 notice and hearing, allowing a final account adjudicates as
31 to all previously unsettled liabilities of the conservator
32 to the protected person or his successors relating to the
33 conservatorship. In connection with any account, the court
34 may require a conservator to submit to a physical check of
35 the estate in his control, to be made in any matter the court

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1 may specify.
2 Sec. 5420. NEW SECTION. CONSERVATORS; TITLE BY APPOINT-
3 MENT. The appointment of a conservator vests in him title
4 as trustee to all property of the protected person, presently
5 held or thereafter acquired, including title to any property
6 theretofore held for the protected person by custodians or
7 attorneys in fact. The appointment of a conservator is not
8 a transfer or alienation within the meaning of general pro-
9 visions of any federal or state statute or regulation, in-
10 surance policy, pension plan, contract, will or trust instru-
11 ment, imposing restrictions upon or penalties for transfer
12 or alienation by the protected person of his rights or in-
13 terests, but this section does not restrict the ability of
14 persons to make specific provision by contract or disposi-
15 tive instrument relating to a conservator.
16 Sec. 5421. NEW SECTION. RECORDING OF CONSERVATOR'S LET-
17 TERS. Letters of conservatorship are evidence of transfer
18 of all assets of a protected person to the conservator. An
19 order terminating a conservatorship is evidence of transfer
20 of all assets of the estate from the conservator to the pro-
21 tected person, or his successors. Subject to the require-
22 ments of general statutes governing the filing or recordation
23 of documents of title to land or other property, letters of
24 conservatorship, and orders terminating conservatorships,
25 may be filed or recorded to give record notice of title as
26 between the conservator and the protected person.
27 Sec. 5422. NEW SECTION. SALE, ENCUMBRANCE OR TRANSACTION
28 INVOLVING CONFLICT OF INTEREST; VOIDABLE; EXCEPTIONS. Any
29 sale or encumbrance to a conservator, his spouse, agent or
30 attorney, or any corporation or trust in which he has a sub-
31 stantial beneficial interest, or any transaction which is
32 affected by a substantial conflict of interest is voidable
33 unless the transaction is approved by the court after notice
34 to interested persons and others as directed by the court.
35 Sec. 5423. NEW SECTION. PERSONS DEALING WITH CONSERVA-

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1 TORS; PROTECTION. A person who in good faith either assists
2 a conservator or deals with him for value in any transaction
3 other than those requiring a court order as provided in sec-
4 tion five thousand four hundred eight (5408) of this Act,
5 is protected as if the conservator properly exercised the
6 power. The fact that a person knowingly deals with a con-
7 servator does not alone require the person to inquire into
8 the existence of a power or the propriety of its exercise,
9 except that restrictions on powers of conservators which are
10 endorsed on letters as provided in section five thousand four
11 hundred twenty-six (5426) of this Act are effective as to
12 third persons. A person is not bound to see to the proper
13 application of estate assets paid or delivered to a conser-
14 vator. The protection here expressed extends to instances
15 in which some procedural irregularity or jurisdictional de-
16 fect occurred in proceedings leading to the issuance of let-
17 ters. The protection here expressed is not by substitution
18 for that provided by comparable provisions of the laws relat-
19 ing to commercial transactions and laws simplifying transfers
20 of securities by fiduciaries.
21 Sec. 5424. NEW SECTION. POWERS OF CONSERVATOR IN AD-
22 MINISTRATION.
23 1. A conservator has all of the powers conferred herein
24 and any additional powers conferred by law on trustees in
25 this state. In addition, a conservator of the estate of an
26 unmarried minor under the age of eighteen years, as to whom
27 no one has parental rights, has the duties and powers of a
28 guardian of a minor described in section five thousand two
29 hundred nine (5209) of this Act until the minor attains the
30 age of eighteen or marries, but the parental rights so con-
31 ferred on a conservator do not preclude appointment of a
32 guardian as provided by Part two (2) of this Article.
33 2. A conservator has power without court authorization
34 or confirmation, to invest and reinvest funds of the estate
35 as would a trustee.

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1 3. A conservator, acting reasonably in efforts to ac-
2 complish the purpose for which he was appointed, may act
3 without court authorization or confirmation, to:
4 a. Collect, hold and retain assets of the estate includ-
5 ing land in another state, until, in his judgment, disposi-
6 tion of the assets should be made, and the assets may be
7 retained even though they include an asset in which he is
8 personally interested;
9 b. Receive additions to the estate;
10 c. Continue or participate in the operation of any busi-
11 ness or other enterprise;
12 d. Acquire an undivided interest in an estate asset in
13 which the conservator, in any fiduciary capacity, holds an
14 undivided interest;
15 e. Invest and reinvest estate assets in accordance with
16 subsection two (2) of this section;
17 f. Deposit estate funds in a bank including a bank oper-
18 ated by the conservator;
19 g. Acquire or dispose of an estate asset including land
20 in another state for cash or on credit, at public or private
21 sale; and to manage, develop, improve, exchange, partition,
22 change the character of, or abandon an estate asset for a
23 term within or extending beyond the term of the conservator-
24 ship in connection with the exercise of any power vested in
25 the conservator;
26 h. Make ordinary or extraordinary repairs or alterations
27 in buildings or other structures, to demolish any improve-
28 ments, to raze existing or erect new party walls or build-
29 ings;
30 i. Subdivide, develop, or dedicate land to public use;
31 to make or obtain the vacation of plats and adjust boundaries;
32 to adjust differences in valuation on exchange or to parti-
33 tion by giving or receiving considerations; and to dedicate
34 easements to public use without consideration;
35 j. Enter for any purpose into a lease as lessor or lessee

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1 with or without option to purchase or renew for a term within
2 or extending beyond the term of the conservatorship;
3 k. Enter into a lease or arrangement for exploration and
4 removal of minerals or other natural resources or enter into
5 a pooling or unitization agreement;
6 l. Grant an option involving disposition of an estate
7 asset, to take an option for the acquisition of any asset;
8 m. Vote a security, in person or by general or limited
9 proxy;
10 n. Pay calls, assessments, and any other sums chargeable
11 or accruing against or on account of securities;
12 o. Sell or exercise stock subscription or conversion
13 rights; to consent, directly or through a committee or other
14 agent, to the reorganization, consolidation, merger,
15 dissolution, or liquidation of a corporation or other business
16 enterprise;
17 p. Hold a security in the name of a nominee or in other
18 form without disclosure of the conservatorship so that title
19 to the security may pass by delivery, but the conservator
20 is liable for any act of the nominee in connection with the
21 stock so held;
22 q. Insure the assets of the estate against damage or loss,
23 and the conservator against liability with respect to third
24 persons;
25 r. Borrow money to be repaid from estate assets or other-
26 wise; to advance money for the protection of the estate or
27 the protected person, and for all expenses, losses, and lia-
28 bility sustained in the administration of the estate or be-
29 cause of the holding or ownership of any estate assets and
30 the conservator has a lien on the estate as against the pro-
31 tected person for advances so made;
32 s. Pay or contest any claim; to settle a claim by or
33 against the estate or the protected person by compromise,
34 arbitration, or otherwise; and to release, in whole or in
35 part, any claim belonging to the estate to the extent that

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1 the claim is uncollectible;
2 t. Pay taxes, assessments, compensation of the conser-
3 vator, and other expenses incurred in the collection, care,
4 administration and protection of the estate;
5 u. Allocate items of income or expense to either estate
6 income or principal, as provided by law, including creation
7 of reserves out of income for depreciation, obsolescence,
8 or amortization, or for depletion in mineral or timber prop-
9 erties;
10 v. Pay any sum distributable to a protected person or
11 a dependent of the person who is a minor or incompetent,
12 without liability to the conservator, by paying the sum to
13 the distributee or by paying the sum for the use of the dis-
14 tributee either to his guardian or if none, to a relative
15 or other person with custody of his person;
16 w. Employ persons, including attorneys, auditors, in-
17 vestment advisors, or agents, even though they are associated
18 with the conservator to advise or assist him in the perform-
19 ance of his administrative duties; to act upon their recom-
20 mendation without independent investigation; and instead of
21 acting personally, to employ one or more agents to perform
22 any act of administration, whether or not discretionary;
23 x. Prosecute or defend actions, claims or proceedings
24 in any jurisdiction for the protection of estate assets and
25 of the conservator in the performance of his duties; and
26 y. Execute and deliver all instruments which will ac-
27 complish or facilitate the exercise of the powers vested in
28 the conservator.
29 Sec. 5425. NEW SECTION. DISTRIBUTIVE DUTIES AND POWERS
30 OF CONSERVATOR.
31 1. A conservator may expend or distribute income or prin-
32 cipal of the estate without court authorization or confirma-
33 tion for the support, education, care or benefit of the pro-
34 tected person and his dependents in accordance with the fol-
35 lowing principles:

1 a. The conservator is to consider recommendations relat-
2 ing to the appropriate standard of support, education and
3 benefit for the protected person made by a parent or guardian,
4 if any. He may not be surcharged for sums paid to persons
5 or organizations actually furnishing support, education or
6 care to the protected person pursuant to the recommendations
7 of a parent or guardian of the protected person unless he
8 knows that the parent or guardian is deriving personal fi-
9 nancial benefit therefrom, including relief from any personal
10 duty of support, or unless the recommendations are clearly
11 not in the best interests of the protected person.
12 b. The conservator is to expend or distribute sums rea-
13 sonably necessary for the support, education, care or bene-
14 fit of the protected person with due regard to the size of
15 the estate, the probable duration of the conservatorship and
16 the likelihood that the protected person, at some future time,
17 may be fully able to manage his affairs and the estate which
18 has been conserved for him; the accustomed standard of living
19 of the protected person and members of his household; other
20 funds or sources used for the support of the protected per-
21 son.
22 c. The conservator may expend funds of the estate for
23 the support of persons legally dependent on the protected
24 person and others who are members of the protected person's
25 household who are unable to support themselves, and who are
26 in need of support.
27 d. Funds expended under this subsection may be paid by
28 the conservator to any person, including the protected per-
29 son to reimburse for expenditures which the conservator might
30 have made, or in advance for services to be rendered to the
31 protected person when it is reasonable to expect that they
32 will be performed and where advance payments are customary
33 or reasonably necessary under the circumstances.
34 2. If the estate is ample to provide for the purposes
35 implicit in the distributions authorized by the preceding

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1 subsections, a conservator for a protected person other than
2 a minor has power to make gifts to charity and other objects
3 as the protected person might have been expected to make,
4 in amounts which do not exceed in total for any year twenty
5 percent of the income from the estate.
6 3. When a minor who has not been adjudged disabled under
7 section five thousand four hundred one (5401), subsection
8 two (2) of this Act, attains his majority, his conservator,
9 after meeting all prior claims and expenses of administration,
10 shall pay over and distribute all funds and properties to
11 the former protected person as soon as possible.
12 4. When the conservator is satisfied that a protected
13 person's disability, other than minority, has ceased, the
14 conservator, after meeting all prior claims and expenses of
15 administration, shall pay over and distribute all funds and
16 properties to the former protected person as soon as possi-
17 ble.
18 5. If a protected person dies, the conservator shall de-
19 liver to the court for safekeeping any will of the deceased
20 protected person which may have come into his possession,
21 inform the executor or a beneficiary named therein that he
22 has done so, and retain the estate for delivery to a duly
23 appointed personal representative of the decedent or other
24 persons entitled thereto. If after forty days from the death
25 of the protected person no other person has been appointed
26 personal representative and no application or petition for
27 appointment is before the court, the conservator may apply
28 to exercise the powers and duties of a personal representa-
29 tive so that he may proceed to administer and distribute the
30 decedent's estate without additional or further appointment.
31 Upon application for an order granting the powers of a per-
32 sonal representative to a conservator, after notice to any
33 person demanding notice under section three thousand two hun-
34 dred four (3204) of this Act and to any person nominated exec-
35 utor in any will of which the applicant is aware, the court

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1 may order the conferral of the power upon determining that
2 there is no objection, and endorse the letters of the con-
3 servator to note that the formerly protected person is de-
4 ceased and that the conservator has acquired all of the powers
5 and duties of a personal representative. The making and en-
6 try of an order under this section shall have the effect of
7 an order of appointment of a personal representative as pro-
8 vided in section three thousand three hundred eight (3308)
9 of this Act and Parts six (6) through ten (10) of Article
10 three (III) except that estate in the name of the conserva-
11 tor, after administration, may be distributed to the dece-
12 dent's successors without prior retransfer to the conserva-
13 tor as personal representative.
14 Sec. 5426. NEW SECTION. ENLARGEMENT OR LIMITATION OF
15 POWERS OF CONSERVATOR. Subject to the restrictions in sec-
16 tion five thousand four hundred eight (5408), subsection four
17 (4) of this Act, the court may confer on a conservator at
18 the time of appointment or later, in addition to the powers
19 conferred on him by sections five thousand four hundred twenty-
20 four (5424) and five thousand four hundred twenty-five (5425)
21 of this Act, any power which the court itself could exercise
22 under sections five thousand four hundred eight (5408),
23 subsections two (2) and three (3) of this Act. The court
24 may, at the time of appointment or later, limit the powers
25 of a conservator otherwise conferred by sections five thousand
26 four hundred twenty-four (5424) and five thousand four hundred
27 twenty-five (5425) of this Act, or previously conferred by
28 the court, and may at any time relieve him of any limitation.
29 If the court limits any power conferred on the conservator
30 by section five thousand four hundred twenty-four (5424) or
31 section five thousand four hundred twenty-five (5425) of this
32 Act, the limitation shall be endorsed upon his letters of
33 appointment.
34 Sec. 5427. NEW SECTION. PRESERVATION OF ESTATE PLAN.
35 In investing the estate, and in selecting assets of the estate

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1 for distribution under subsections one (1) and two (2) of
2 section five thousand four hundred twenty-five (5425) of this
3 Act, in utilizing powers of revocation or withdrawal available
4 for the support of the protected person, and exercisable by
5 the conservator or the court, the conservator and the court
6 should take into account any known estate plan of the pro-
7 tected person, including his will, any revocable trust of
8 which he is settlor, and any contract, transfer or joint
9 ownership arrangement with provisions for payment or transfer
10 of benefits or interests at his death to another or others
11 which he may have originated. The conservator may examine
12 the will of the protected person.
13 Sec. 5428. NEW SECTION. CLAIMS AGAINST PROTECTED PERSON;
14 ENFORCEMENT.
15 1. A conservator must pay from the estate all just claims
16 against the estate and against the protected person arising
17 before or after the conservatorship upon their presentation
18 and allowance. A claim may be presented by either of the
19 following methods: the claimant may deliver or mail to the
20 conservator a written statement of the claim indicating its
21 basis, the name and address of the claimant and the amount
22 claimed; or the claimant may file a written statement of the
23 claim, in the form prescribed by rule, with the clerk of the
24 court and deliver or mail a copy of the statement to the con-
25 servator. A presented claim is allowed if it is not disal-
26 lowed by written statement mailed by the conservator to the
27 claimant within sixty days after its presentation. The pre-
28 sentation of a claim tolls any statute of limitation relat-
29 ing to the claim until thirty days after its disallowance.
30 2. A claimant whose claim has not been paid may petition
31 the court for determination of his claim at any time before
32 it is barred by the applicable statute of limitation, and,
33 upon due proof, procure an order for its allowance and pay-
34 ment from the estate. If a proceeding is pending against
35 a protected person at the time of appointment of a conser-

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1 vator or is initiated against the protected person thereafter,
2 the moving party must give notice of the proceeding to the
3 conservator if the outcome is to constitute a claim against
4 the estate.
5 3. If it appears that the estate in conservatorship is
6 likely to be exhausted before all existing claims are paid,
7 preference is to be given to prior claims for the care, main-
8 tenance and education of the protected person or his depen-
9 dents and existing claims for expenses of administration.
10 Sec. 5429. NEW SECTION. INDIVIDUAL LIABILITY OF CON-
11 SERVATOR.
12 1. Unless otherwise provided in the contract, a conser-
13 vator is not individually liable on a contract properly en-
14 tered into in his fiduciary capacity in the course of admin-
15 istration of the estate unless he fails to reveal his repre-
16 sentative capacity and identify the estate in the contract.
17 2. The conservator is individually liable for obliga-
18 tions arising from ownership or control of property of the
19 estate or for torts committed in the course of administration
20 of the estate only if he is personally at fault.
21 3. Claims based on contracts entered into by a conser-
22 vator in his fiduciary capacity, on obligations arising from
23 ownership or control of the estate, or on torts committed
24 in the course of administration of the estate may be asserted
25 against the estate by proceeding against the conservator in
26 his fiduciary capacity, whether or not the conservator is
27 individually liable therefor.
28 4. Any question of liability between the estate and the
29 conservator individually may be determined in a proceeding
30 for accounting, surcharge, or indemnification, or other ap-
31 propriate proceeding or action.
32 Sec. 5430. NEW SECTION. TERMINATION OF PROCEEDING. The
33 protected person, his personal representative, the conservator
34 or any other interested person may petition the court to
35 terminate the conservatorship. A protected person seeking

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1 termination is entitled to the same rights and procedures
2 as in an original proceeding for a protective order. The
3 court, upon determining after notice and hearing that the
4 minority or disability of the protected person has ceased,
5 may terminate the conservatorship. Upon termination, title
6 to assets of the estate passes to the former protected person
7 or to his successors subject to provision in the order for
8 expenses of administration or to conveyances from the
9 conservator to the former protected persons or his successors,
10 to evidence the transfer.
11 Sec. 5431. NEW SECTION. PAYMENT OF DEBT AND DELIVERY
12 OF PROPERTY TO FOREIGN CONSERVATOR WITHOUT LOCAL PROCEEDINGS.
13 Any person indebted to a protected person, or having posses-
14 sion of property or of an instrument evidencing a debt, stock,
15 or chose in action belonging to a protected person may pay
16 or deliver to a conservator, guardian of the estate or other
17 like fiduciary appointed by a court of the state or residence
18 of the protected person, upon being presented with proof of
19 his appointment and an affidavit made by him or on his behalf
20 stating:
21 1. That no protective proceeding relating to the pro-
22 tected person is pending in this state; and
23 2. That the foreign conservator is entitled to payment
24 or to receive delivery.
25 If the person to whom the affidavit is presented is not aware
26 of any protective proceeding pending in this state, payment
27 or delivery in response to the demand and affidavit discharges
28 the debtor or possessor.
29 PART 5
30 POWERS OF ATTORNEY
31 Sec. 5501. NEW SECTION. WHEN POWER OF ATTORNEY NOT AF-
32 FECTED BY DISABILITY. Whenever a principal designates another
33 his attorney in fact or agent by a power of attorney in writ-
34 ing and the writing contains the words "This power of attorney
35 shall not be affected by disability of the principal," or

1 "This power of attorney shall become effective upon the dis-
2 ability of the principal," or similar words showing the intent
3 of the principal that the authority conferred shall be exer-
4 cisable notwithstanding his disability, the authority of the
5 attorney in fact or agent is exercisable by him as provided
6 in the power on behalf of the principal notwithstanding later
7 disability or incapacity of the principal at law or later
8 uncertainty as to whether the principal is dead or alive.
9 All acts done by the attorney in fact or agent pursuant to
10 the power during any period of disability or incompetence
11 or uncertainty as to whether the principal is dead or alive
12 have the same effect and inure to the benefit of and bind
13 the principal or his heirs, devisees and personal represen-
14 tative as if the principal were alive, competent and not dis-
15 abled. If a conservator thereafter is appointed for the
16 principal, the attorney in fact or agent, during the contin-
17 uance of the appointment, shall account to the conservator
18 rather than the principal. The conservator has the same power
19 the principal would have had if he were not disabled or the
20 principal would have had if he were not protected or the power
21 of attorney or agency.
22 Sec. 5502. NEW SECTION. OTHER POWERS OF ATTORNEY NOT
23 REVOKED UNTIL NOTICE OF DEATH OR DISABILITY.
24 1. The death, disability, or incompetence of any princi-
25 pal who has executed a power of attorney in writing other
26 than a power as described by section five thousand five hun-
27 dred one (5501) of this Act, does not revoke or terminate
28 the agency as to the attorney in fact, agent or other person
29 who, without actual knowledge of the death, disability, or
30 incompetence of the principal, acts in good faith under the
31 power of attorney or agency. Any action so taken, unless
32 otherwise invalid or unenforceable, binds the principal and
33 his heirs, devisees, and personal representatives.
34 2. An affidavit, executed by the attorney in fact or agent
35 stating that he did not have, at the time of doing an act

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1 pursuant to the power of attorney, actual knowledge of the
2 revocation or termination of the power of attorney by death,
3 disability or incompetence, is, in the absence of fraud, con-
4 clusive proof of the nonrevocation or nontermination of the
5 power at that time. If the exercise of the power requires
6 execution and delivery of any instrument which is recordable,
7 the affidavit when authenticated for record is likewise re-
8 cordable.
9 3. This section shall not be construed to alter or af-
10 fect any provision for revocation or termination contained
11 in the power of attorney.
12 ARTICLE VI
13 NONPROBATE TRANSFERS
14 PART 1
15 MULTIPLE-PARTY ACCOUNTS
16 Sec. 6101. NEW SECTION. DEFINITIONS. In this Part,
17 unless the context otherwise requires:
18 1. "Account" means a contract of deposit of funds between
19 a depositor and a financial institution, and includes a check-
20 ing account, savings account, certificate of deposit, share
21 account and other like arrangement;
22 2. "Beneficiary" means a person named in a trust account
23 as one for whom a party to the account is named as trustee;
24 3. "Financial institution" means any organization
25 authorized to do business under state or federal laws relating
26 to financial institutions, including, without limitation,
27 banks and trust companies, savings banks, building and loan
28 associations, savings and loan companies or associations,
29 and credit unions;
30 4. "Joint account" means an account payable on request
31 to one or more of two or more parties whether or not mention
32 is made of any right of survivorship;
33 5. A "multiple-party account" is any of the following
34 types of acocunt: a joint account, a P.O.D. account, or a
35 trust account. It does not include accounts established for

1 deposit of funds of a partnership, joint venture, or other
2 association for business purposes, or accounts controlled
3 by one or more persons as the duly authorized agent or trustee
4 for a corporation, unincorporated association, charitable
5 or civic organization or a regular fiduciary or trust account
6 where the relationship is established other than by deposit
7 agreement;
8 6. "Net contribution" of a party to a joint account as
9 of any given time is the sum of all deposits thereto made
10 by or for him, less all withdrawals made by or for him which
11 have not been paid to or applied to the use of any other
12 party, plus a pro rata share of any interest or dividends
13 included in the current balance. The term includes, in ad-
14 dition, any proceeds of deposit life insurance added to the
15 account by reason of the death of the party whose net contri-
16 bution is in question;
17 7. "Party" means a person who, by the terms of the ac-
18 count, has a present right, subject to request, to payment
19 from a multiple-party account. A P.O.D. payee or beneficiary
20 of a trust account is a party only after the account becomes
21 payable to him by reason of his surviving the original payee
22 or trustee. Unless the context otherwise requires, it in-
23 cludes a guardian, conservator, personal representative, or
24 assignee, including an attaching creditor, of a party. It
25 also includes a person identified as a trustee of an account
26 for another whether or not a beneficiary is named, but it
27 does not include any named beneficiary unless he has a present
28 right of withdrawal;
29 8. "Payment" of sums on deposit includes withdrawal, pay-
30 ment on check or other directive of a party, and any pledge
31 of sums on deposit by a party and any set-off, or reduction
32 or other disposition of all or part of an account pursuant
33 to a pledge;
34 9. "Proof of death" includes a death certificate or record
35 or report which is prima facie proof of death under section

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1 one thousand one hundred seven (1107) of this Act.
2 10. "P.O.D. account" means an account payable on request
3 to one person during lifetime and on his death to one or more
4 P.O.D. payees, or to one or more persons during their life-
5 times and on the death of all of them to one or more P.O.D.
6 payees;
7 11. "P.O.D. payee" means a person designated on a P.O.D.
8 account as one to whom the account is payable on request after
9 the death of one or more persons;
10 12. "Request" means a proper request for withdrawal, or
11 a check or order for payment, which complies with all condi-
12 tions of the account, including special requirements concern-
13 ing necessary signatures and regulations of the financial
14 institution; but if the financial institution conditions with-
15 drawal or payment on advance notice, for purposes of this
16 part the request for withdrawal or payment is treated as
17 immediately effective and a notice of intent to withdraw is
18 treated as a request for withdrawal;
19 13. "Sums on deposit" means the balance payable on a
20 multiple-party account including interest, dividends, and
21 in addition any deposit life insurance proceeds added to the
22 account by reason of the death of a party;
23 14. "Trust account" means an account in the name of one
24 or more parties as trustee for one or more beneficiaries where
25 the relationship is established by the form of the account
26 and the deposit agreement with the financial institution and
27 there is no subject of the trust other than the sums on deposit
28 in the account; it is not essential that payment to the
29 beneficiary be mentioned in the deposit agreement. A trust
30 account does not include a regular trust account under a
31 testamentary trust or a trust agreement which has significance
32 apart from the account, or a fiduciary account arising from
33 a fiduciary relation such as attorney-client;
34 15. "Withdrawal" includes payment to a third person pur-
35 suant to check or other directive of a party.

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1 Sec. 6102. NEW SECTION. OWNERSHIP AS BETWEEN PARTIES,
2 AND OTHERS; PROTECTION OF FINANCIAL INSTITUTIONS. The pro-
3 visions of sections six thousand one hundred three (6103)
4 to six thousand one hundred five (6105) of this Act concern-
5 ing beneficial ownership as between parties, or as between
6 parties and P.O.D. payees or beneficiaries of multiple-party
7 accounts, are relevant only to controversies between these
8 persons and their creditors and other successors, and have
9 no bearing on the power of withdrawal of these persons as
10 determined by the terms of account contracts. The provisions
11 of sections six thousand one hundred eight (6108) to six thou-
12 sand one hundred thirteen (6113) of this Act govern the lia-
13 bility of financial institutions who make payments pursuant
14 thereto, and their set-off rights.
15 Sec. 6103. NEW SECTION. OWNERSHIP DURING LIFETIME.
16 1. A joint account belongs, during the lifetime of all
17 parties, to the parties in proportion to the net contribu-
18 tions by each to the sums on deposit, unless there is clear
19 and convincing evidence of a different intent.
20 2. A P.O.D. account belongs to the original payee dur-
21 ing his lifetime and not to the P.O.D. payee or payees; if
22 two or more parties are named as original payees, during their
23 lifetimes rights as between them are governed by subsection
24 one (1) of this section.
25 3. Unless a contrary intent is manifested by the terms
26 of the account or the deposit agreement or there is other
27 clear and convincing evidence of an irrevocable trust, a trust
28 account belongs beneficially to the trustee during his
29 lifetime, and if two or more parties are named as trustee
30 on the account, during their lifetimes beneficial rights as
31 between them are governed by subsection one (1) of this sec-
32 tion. If there is an irrevocable trust, the account belongs
33 beneficially to the beneficiary.
34 Sec. 6104. NEW SECTION. RIGHT OF SURVIVORSHIP.
35 1. Sums remaining on deposit at the death of a party to

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1 a joint account belong to the surviving party or parties as
2 against the estate of the decedent unless there is clear and
3 convincing evidence of a different intention at the time the
4 account is created. If there are two or more surviving
5 parties, their respective ownerships during lifetime shall
6 be in proportion to their previous ownership interests under
7 section six thousand one hundred three (6103) of this Act
8 augmented by an equal share for each survivor of any interest
9 the decedent may have owned in the account immediately before
10 his death; and the right of survivorship continues between
11 the surviving parties.
12 2. If the account is a P.O.D. account, on death of the
13 original payee or of the survivor of two or more original
14 payees, any sums remaining on deposit belong to the P.O.D.
15 payee or payees if surviving, or to the survivor of them if
16 one or more die before the original payee; if two or more
17 P.O.D. payees survive, there is no right of survivorship in
18 event of death of a P.O.D. payee thereafter unless the terms
19 of the account or deposit agreement expressly provide for
20 survivorship between them.
21 3. If the account is a trust account, on death of the
22 trustee or the survivor of two or more trustees, any sums
23 remaining on deposit belong to the person or persons named
24 as beneficiaries, if surviving, or to the survivor of them
25 if one or more die before the trustee, unless there is clear
26 and convincing evidence of a contrary intent; if two or more
27 beneficiaries survive, there is no right of survivorship in
28 event of death of any beneficiary thereafter unless the terms
29 of the account or deposit agreement expressly provide for
30 survivorship between them.
31 4. In other cases, the death of any party to a multiple-
32 party account has no effect on beneficial ownership of the
33 account other than to transfer the rights of the decedent
34 as part of his estate.
35 5. A right of survivorship arising from the express terms

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1 of the account or under this section, a beneficiary designa-
2 tion in a trust account, or a P.O.D. payee designation, can-
3 not be changed by will.
4 Sec. 6105. NEW SECTION. EFFECT OF WRITTEN NOTICE TO
5 FINANCIAL INSTITUTION. The provisions of section six thou-
6 sand one hundred four (6104) of this Act as to rights of
7 survivorship are determined by the form of the account at
8 the death of a party. This form may be altered by written
9 order given by a party to the financial institution to change
10 the form of the account or to stop or vary payment under the
11 terms of the account. The order or request must be signed
12 by a party, received by the financial institution during the
13 party's lifetime, and not countermanded by other written order
14 of the same party during his lifetime.
15 Sec. 6106. NEW SECTION. ACCOUNTS AND TRANSFERS NON-
16 TESTAMENTARY. Any transfers resulting from the application
17 of section six thousand one hundred four (6104) of this Act
18 are effective by reason of the account contracts involved
19 and this statute and are not to be considered as testamentary
20 or subject to Articles one (I) through four (IV) of this Act.
21 Sec. 6107. NEW SECTION. RIGHTS OF CREDITORS. No multiple-
22 party account will be effective against an estate of a deceased
23 party to transfer to a survivor sums needed to pay debts,
24 taxes, and expenses of administration, including statutory
25 allowances to the surviving spouse, minor children and
26 dependent children, if other assets of the estate are
27 insufficient. A surviving party, P.O.D. payee, or beneficiary
28 who receives payment from a multiple-party account after the
29 death of a deceased party shall be liable to account to his
30 personal representative for amounts the decedent owned
31 beneficially immediately before his death to the extent
32 necessary to discharge the claims and charges mentioned above
33 remaining unpaid after application of the decedent's estate.
34 No proceeding to assert this liability shall be commenced
35 unless the personal representative has received a written

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1 demand by a surviving spouse, a creditor or one acting for
2 a minor or dependent child of the decedent, and no proceeding
3 shall be commenced later than two years following the death
4 of the decedent. Sums recovered by the personal representative
5 shall be administered as part of the decedent's estate. This
6 section shall not affect the right of a financial institution
7 to make payment on multiple-party accounts according to the
8 terms thereof, or make it liable to the estate of a deceased
9 party unless before payment the institution has been served
10 with process in a proceeding by the personal representative.
11 Sec. 6108. NEW SECTION. FINANCIAL INSTITUTION PROTEC-
12 TION; PAYMENT ON SIGNATURE OF ONE PARTY. Financial insti-
13 tutions may enter into multiple-party accounts to the same
14 extent that they may enter into single-party accounts. Any
15 multiple-party account may be paid, on request, to any one
16 or more of the parties. A financial institution shall not
17 be required to inquire as to the source of funds received
18 for deposit to a multiple-party account, or to inquire as
19 to the proposed application of any sum withdrawn from an ac-
20 count, for purposes of establishing net contributions.
21 Sec. 6109. NEW SECTION. FINANCIAL INSTITUTION PROTEC-
22 TION; PAYMENT AFTER DEATH OR DISABILITY; JOINT ACCOUNT. Any
23 sums in a joint account may be paid, on request, to any party
24 without regard to whether any other party is incapacitated
25 or deceased at the time the payment is demanded; but payment
26 may not be made to the personal representative or heirs of
27 a deceased party unless proofs of death are presented to the
28 financial institution showing that the decedent was the last
29 surviving party or unless there is no right of survivorship
30 under section six thousand one hundred four (6104) of this
31 Act.
32 Sec. 6110. NEW SECTION. FINANCIAL INSTITUTION PROTEC-
33 TION; PAYMENT OF P.O.D. ACCOUNT. Any P.O.D. account may be
34 paid, on request, to any original party to the account. Pay-
35 ment may be made, on request, to the P.O.D. payee or to the

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1 personal representative or heirs of a deceased P.O.D. payee
2 upon presentation to the financial institution of proof of
3 death showing that the P.O.D. payee survived all persons named
4 as original payees. Payment may be made to the personal rep-
5 resentative or heirs of a deceased original payee if proof
6 of death is presented to the financial institution showing
7 that his decedent was the survivor of all other persons named
8 on the account either as an original payee or as P.O.D. payee.
9 Sec. 6111. NEW SECTION. FINANCIAL INSTITUTION PROTEC-
10 TION; PAYMENT OF TRUST ACCOUNT. Any trust account may be
11 paid, on request, to any trustee. Unless the financial in-
12 stitution has received written notice that the beneficiary
13 has a vested interest not dependent upon his surviving the
14 trustee, payment may be made to the personal representative
15 or heirs of a deceased trustee if proof of death is presented
16 to the financial institution showing that his decedent was
17 the survivor of all other persons named on the account either
18 as trustee or beneficiary. Payment may be made, on request,
19 to the beneficiary upon presentation to the financial insti-
20 tution of proof of death showing that the beneficiary or bene-
21 ficiaries survived all persons named as trustees.
22 Sec. 6112. NEW SECTION. FINANCIAL INSTITUTION PROTEC-
23 TION; DISCHARGE. Payment made pursuant to sections six thou-
24 sand one hundred eight (6108), six thousand one hundred nine
25 (6109), six thousand one hundred ten (6110) or six thousand
26 one hundred eleven (6111) of this Act discharges the financial
27 institution from all claims for amounts so paid whether or
28 not the payment is consistent with the beneficial ownership
29 of the account as between parties, P.O.D. payees, or bene-
30 ficiaries, or their successors. The protection here given
31 does not extend to payments made after a financial institu-
32 tion has received written notice from any party able to re-
33 quest present payment to the effect that withdrawals in ac-
34 cordance with the terms of the account should not be per-
35 mitted. Unless the notice is withdrawn by the person giving

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1 it, the successor of any deceased party must concur in any
2 demand for withdrawal if the financial institution is to be
3 protected under this section. No other notice or any other
4 information shown to have been available to a financial in-
5 stitution shall affect its right to the protection provided
6 here. The protection here provided shall have no bearing
7 on the rights of parties in disputes between themselves or
8 their successors concerning the beneficial ownership of funds
9 in, or withdrawn from, multiple-party accounts.
10 Sec. 6113. NEW SECTION. FINANCIAL INSTITUTION PROTEC-
11 TION; SET-OFF. Without qualifying any other statutory right
12 to set-off or lien and subject to any contractual provision,
13 if a party to a multiple-party account is indebted to a fi-
14 nancial institution, the financial institution has a right
15 to set-off against the account in which the party has or had
16 immediately before his death a present right of withdrawal.
17 The amount of the account subject to set-off is that propor-
18 tion to which the debtor is, or was immediately before his
19 death, beneficially entitled, and in the absence of proof
20 of net contributions, to an equal share with all parties hav-
21 ing present rights of withdrawal.
22 PART 2
23 PROVISIONS RELATING TO EFFECT OF DEATH
24 Sec. 6201. NEW SECTION. PROVISIONS FOR PAYMENT OR TRANS-
25 FER AT DEATH.
26 1. Any of the following provisions in an insurance policy,
27 contract of employment, bond, mortgage, promissory note, de-
28 posit agreement, pension plan, trust agreement, conveyance
29 or any other written instrument effective as a contract, gift,
30 conveyance, or trust is deemed to be nontestamentary, and
31 this Act does not invalidate the instrument or any provision:
32 a. That money or other benefits theretofore due to, con-
33 trolled or owned by a decedent shall be paid after his death
34 to a person designated by the decedent in either the instru-
35 ment or a separate writing, including a will, executed at

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1 the same time as the instrument or subsequently;
2 b. That any money due or to become due under the instru-
3 ment shall cease to be payable in event of the death of the
4 promisee or the promissor before payment or demand; or
5 c. That any property which is the subject of the instru-
6 ment shall pass to a person designated by the decedent in
7 either the instrument or a separate writing, including a will,
8 executed at the same time as the instrument or subsequently.
9 2. Nothing in this section limits the rights of creditors
10 under other laws of this state.
11 ARTICLE VII
12 TRUST ADMINISTRATION
13 PART 1
14 TRUST REGISTRATION
15 Sec. 7101. NEW SECTION. DUTY TO REGISTER TRUSTS. The
16 trustee of a trust having its principal place of administra-
17 tion in this state shall register the trust in the court of
18 this state at the principal place of administration. Unless
19 otherwise designated in the trust instrument, the principal
20 place of administration of a trust is the trustee's usual
21 place of business where the records pertaining to the trust
22 are kept, or at the trustee's residence if he has no such
23 place of business. In the case of co-trustees, the principal
24 place of administration, if not otherwise designated in the
25 trust instrument, is the usual place of business of the cor-
26 porate trustee if there is but one corporate co-trustee, or
27 the usual place of business or residence of the individual
28 trustee who is a professional fiduciary if there is but one
29 such person and no corporate co-trustee, and otherwise the
30 usual place of business or residence of any of the co-trustees
31 as agreed upon by them. The duty to register under this Part
32 does not apply to the trustee of a trust if registration would
33 be inconsistent with the retained jurisdiction of a foreign
34 court from which the trustee cannot obtain release.
35 Sec. 7102. NEW SECTION. REGISTRATION PROCEDURES. Regis-

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1 tration shall be accomplished by filing a statement indicating
2 the name and address of the trustee in which it acknowledges
3 the trusteeship. The statement shall indicate whether the
4 trust has been registered elsewhere. The statement shall
5 identify the trust: in the case of a testamentary trust,
6 by the name of the testator and the date and place of domi-
7 ciliary probate; in the case of a written inter vivos trust,
8 by the name of each settlor and the original trustee and the
9 date of the trust instrument; or in the case of an oral trust,
10 by information identifying the settlor or other source of
11 funds and describing the time and manner of the trust's crea-
12 tion and the terms of the trust, including the subject matter,
13 beneficiaries and time of performance. If a trust has been
14 registered elsewhere, registration in this state is ineffec-
15 tive until the earlier registration is released by order of
16 the court where prior registration occurred, or an instru-
17 ment executed by the trustee and all beneficiaries, filed
18 with the registration in this state.
19 Sec. 7103. NEW SECTION. EFFECT OF REGISTRATION.
20 1. By registering a trust, or accepting the trusteeship
21 of a registered trust, the trustee submits personally to the
22 jurisdiction of the court in any proceeding under section
23 seven thousand two hundred one (7201) of this Act relating
24 to the trust that may be initiated by any interested person
25 while the trust remains registered. Notice of any proceed-
26 ing shall be delivered to the trustee, or mailed to him by
27 ordinary first class mail at his address as listed in the
28 registration or as thereafter reported to the court and to
29 his address as then known to the petitioner.
30 2. To the extent of their interests in the trust, all
31 beneficiaries of a trust properly registered in this state
32 are subject to the jurisdiction of the court of registration
33 for the purposes of proceedings under section seven thousand
34 two hundred one (7201) of this Act, provided notice is given
35 pursuant to section one thousand four hundred one (1401) of

1 this Act.
2 Sec. 7104. NEW SECTION. EFFECT OF FAILURE TO REGISTER.
3 A trustee who fails to register a trust in a proper place
4 as required by this Part, for purposes of any proceedings
5 initiated by a beneficiary of the trust prior to registra-
6 tion, is subject to the personal jurisdiction of any court
7 in which the trust could have been registered. In addition,
8 any trustee who, within thirty days after receipt of a writ-
9 ten demand by a settlor or beneficiary of the trust, fails
10 to register a trust as required by this Part is subject to
11 removal and denial of compensation or to surcharge as the
12 court may direct. A provision in the terms of the trust pur-
13 porting to excuse the trustee from the duty to register, or
14 directing that the trust or trustee shall not be subject to
15 the jurisdiction of the court, is ineffective.
16 Sec. 7105. NEW SECTION. REGISTRATION, QUALIFICATION OF
17 FOREIGN TRUSTEE. A foreign corporate trustee is required
18 to qualify as a foreign corporation doing business in this
19 state if it maintains the principal place of administration
20 of any trust within the state. A foreign co-trustee is not
21 required to qualify in this state solely because its co-trustee
22 maintains the principal place of administration in this state.
23 Unless otherwise doing business in this state, local qualifi-
24 cation by a foreign trustee, corporate or individual, is not
25 required in order for the trustee to receive distribution
26 from a local estate or to hold, invest in, manage or acquire
27 property located in this state, or maintain litigation.
28 Nothing in this section affects a determination of what other
29 acts require qualification as doing business in this state.
30 PART 2
31 JURISDICTION OF COURT CONCERNING TRUSTS
32 Sec. 7201. NEW SECTION. COURT; EXCLUSIVE JURISDICTION
33 OF TRUSTS.
34 1. The court has exclusive jurisdiction of proceedings
35 initiated by interested parties concerning the internal af-

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1 fairs of trusts. Proceedings which may be maintained under
2 this section are those concerning the administration and dis-
3 tribution of trusts, the declaration of rights and the de-
4 termination of other matters involving trustees and benefi-
5 ciaries of trusts. These include, but are not limited to,
6 proceedings to:
7 a. Appoint or remove a trustee;
8 b. Review trustees' fees and to review and settle in-
9 terim or final accounts;
10 c. Ascertain beneficiaries, to determine any question
11 arising in the administration or distribution of any trust
12 including questions of construction of trust instruments,
13 to instruct trustees, and to determine the existence or non-
14 existence of any immunity, power, privilege, duty or right;
15 and
16 d. Release registration of a trust.
17 2. Neither registration of a trust nor a proceeding under
18 this section result in continuing supervisory proceedings.
19 The management and distribution of a trust estate, submission
20 of accounts and reports to beneficiaries, payment of trustee's
21 fees and other obligations of a trust, acceptance and change
22 of trusteeship, and other aspects of the administration of
23 a trust shall proceed expeditiously consistent with the terms
24 of the trust, free of judicial intervention and without or-
25 der, approval or other action of any court, subject to the
26 jurisdiction of the court as invoked by interested parties
27 or as otherwise exercised as provided by law.
28 Sec. 7202. NEW SECTION. TRUST PROCEEDINGS; VENUE. Venue
29 for proceedings under section seven thousand two hundred one
30 (7201) of this Act involving registered trusts is in the place
31 of registration. Venue for proceedings under section seven
32 thousand two hundred one (7201) of this Act involving trusts
33 not registered in this state is in any place where the trust
34 properly could have been registered, and otherwise by the
35 rules of civil procedure.

1 Sec. 7203. NEW SECTION. TRUST PROCEEDINGS; DISMISSAL
2 OF MATTERS RELATING TO FOREIGN TRUSTS. The court will not,
3 over the objection of a party, entertain proceedings under
4 section seven thousand two hundred one (7201) of this Act
5 involving a trust registered or having its principal place
6 of administration in another state, unless when all appro-
7 priate parties could not be bound by litigation in the courts
8 of the state where the trust is registered or has its princi-
9 pal place of administration or when the interests of justice
10 otherwise would seriously be impaired. The court may condi-
11 tion a stay or dismissal of a proceeding under this section
12 on the consent of any party to jurisdiction of the state in
13 which the trust is registered or has its principal place of
14 business, or the court may grant a continuance or enter any
15 other appropriate order.
16 Sec. 7204. NEW SECTION. COURT; CONCURRENT JURISDICTION
17 OF LITIGATION INVOLVING TRUSTS AND THIRD PARTIES. The court
18 of the place in which the trust is registered has concurrent
19 jurisdiction with other courts of this state of actions and
20 proceedings to determine the existence or nonexistence of
21 trusts created other than by will, of actions by or against
22 creditors or debtors of trusts, and of other actions and pro-
23 ceedings involving trustees and third parties. Venue is de-
24 termined by the rules generally applicable to civil actions.
25 Sec. 7205. NEW SECTION. PROCEEDINGS FOR REVIEW OF EM-
26 PLOYMENT OF AGENTS AND REVIEW OF COMPENSATION OF TRUSTEE AND
27 EMPLOYEES OF TRUST. On petition of an interested person,
28 after notice to all interested persons, the court may review
29 the propriety of employment of any person by a trustee includ-
30 ing any attorney, auditor, investment advisor or other spe-
31 cialized agent or assistant, and the reasonableness of the
32 compensation of any person so employed, and the reasonable-
33 ness of the compensation determined by the trustee for his
34 own services. Any person who has received excessive compen-
35 sation from a trust may be ordered to make appropriate re-

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1 funds.
2 Sec. 7206. NEW SECTION. TRUST PROCEEDINGS; INITIATION
3 BY NOTICE; NECESSARY PARTIES. Proceedings under section seven
4 thousand two hundred one (7201) of this Act are initiated
5 by filing a petition in the court and giving notice pursuant
6 to section one thousand four hundred one (1401) of this Act
7 to interested parties. The court may order notification of
8 additional persons. A decree is valid as to all who are given
9 notice of the proceeding though fewer than all interested
10 parties are notified.
11 PART 3
12 DUTIES AND LIABILITIES OF TRUSTEES
13 Sec. 7301. NEW SECTION. GENERAL DUTIES NOT LIMITED.
14 Except as specifically provided, the general duty of the
15 trustee to administer a trust expeditiously for the benefit
16 of the beneficiaries is not altered by this Act.
17 Sec. 7302. NEW SECTION. TRUSTEE'S STANDARD OF CARE AND
18 PERFORMANCE. Except as otherwise provided by the terms of
19 the trust, the trustee shall observe the standards in dealing
20 with the trust assets that would be observed by a prudent
21 man dealing with the property of another, and if the trustee
22 has special skills or is named trustee on the basis of repre-
23 sentations of special skills or expertise, he is under a duty
24 to use those skills.
25 Sec. 7303. NEW SECTION. DUTY TO INFORM AND ACCOUNT TO
26 BENEFICIARIES. The trustee shall keep the beneficiaries of
27 the trust reasonably informed of the trust and its adminis-
28 tration. In addition:
29 1. Within thirty days after his acceptance of the trust,
30 the trustee shall inform in writing the current beneficiaries
31 and if possible, one or more persons who under section one
32 thousand four hundred three (1403) of this Act may represent
33 beneficiaries with future interests, of the court in which
34 the trust is registered and of his name and address.
35 2. Upon reasonable request, the trustee shall provide

1 the beneficiary with a copy of the terms of the trust which
2 describe or affect his interest and with relevant informa-
3 tion about the assets of the trust and the particulars re-
4 lating to the administration.
5 3. Upon reasonable request, a beneficiary is entitled
6 to a statement of the accounts of the trust annually and on
7 termination of the trust or change of the trustee.
8 Sec. 7304. NEW SECTION. DUTY TO PROVIDE BOND. A trustee
9 need not provide bond to secure performance of his duties
10 unless required by the terms of the trust, reasonably re-
11 quested by a beneficiary or found by the court to be neces-
12 sary to protect the interests of the beneficiaries who are
13 not able to protect themselves and whose interests otherwise
14 are not adequately represented. On petition of the trustee
15 or other interested person the court may excuse a require-
16 ment of bond, reduce the amount of the bond, release the
17 surety, or permit the substitution of another bond with the
18 same or different sureties. If bond is required, it shall
19 be filed in the court of registration or other appropriate
20 court in amounts and with sureties and liabilities as pro-
21 vided in sections three thousand six hundred four (3604) and
22 three thousand six hundred six (3606) of this Act relating
23 to bonds of personal representatives.
24 Sec. 7305. NEW SECTION. TRUSTEE'S DUTIES; APPROPRIATE
25 PLACE OF ADMINISTRATION; DEVIATION. A trustee is under a
26 continuing duty to administer the trust at a place appropri-
27 ate to the purposes of the trust and to its sound, efficient
28 management. If the principal place of administration becomes
29 inappropriate for any reason, the court may enter any order
30 furthering efficient administration and the interests of bene-
31 ficiaries, including, if appropriate, release of registration,
32 removal of the trustee and appointment of a trustee in another
33 state. Trust provisions relating to the place of administra-
34 tion and to changes in the place of administration or of
35 trustee control unless compliance would be contrary to ef-

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1 ficient administration or the purposes of the trust. Views
2 of adult beneficiaries shall be given weight in determining
3 the suitability of the trustee and the place of administra-
4 tion.
5 Sec. 7306. NEW SECTION. PERSONAL LIABILITY OF TRUSTEE
6 TO THIRD PARTIES.
7 1. Unless otherwise provided in the contract, a trustee
8 is not personally liable on contracts properly entered into
9 in his fiduciary capacity in the course of administration
10 of the trust estate unless he fails to reveal his represen-
11 tative capacity and identify the trust estate in the con-
12 tract.
13 2. A trustee is personally liable for obligations aris-
14 ing from ownership or control of property of the trust estate
15 or for torts committed in the course of administration of
16 the trust estate only if he is personally at fault.
17 3. Claims based on contracts entered into by a trustee
18 in his fiduciary capacity, on obligations arising from owner-
19 ship or control of the trust estate, or on torts committed
20 in the course of trust administration may be asserted against
21 the trust estate by proceeding against the trustee in his
22 fiduciary capacity, whether or not the trustee is personally
23 liable therefor.
24 4. The question of liability as between the trust estate
25 and the trustee individually may be determined in a proceed-
26 ing for accounting, surcharge or indemnification or other
27 appropriate proceeding.
28 Sec. 7307. NEW SECTION. LIMITATIONS ON PROCEEDINGS AGAINST
29 TRUSTEES AFTER FINAL ACCOUNT. Unless previously barred by
30 adjudication, consent or limitation, any claim against a
31 trustee for breach of trust is barred as to any beneficiary
32 who has received a final account or other statement fully
33 disclosing the matter and showing termination of the trust
34 relationship between the trustee and the beneficiary unless
35 a proceeding to assert the claim is commenced within six

1 months after receipt of the final account or statement. In
2 any event and notwithstanding lack of full disclosure a trustee
3 who has issued a final account or statement received by the
4 beneficiary and has informed the beneficiary of the location
5 and availability of records for his examination is protected
6 after three years. A beneficiary is deemed to have received
7 a final account or statement if, being an adult, it is received
8 by him personally or if, being a minor or disabled person,
9 it is received by his representative as described in section
10 one thousand four hundred three (1403), subsections one (1)
11 and two (2) of this Act.

12 ARTICLE VIII

13 EFFECTIVE DATE AND REPEALER

14 Sec. 8101. TIME OF TAKING EFFECT; PROVISIONS FOR
15 TRANSITION. Except as provided elsewhere in this Act, on
16 the effective date of this Act:
17 1. The Act applies to any wills of decedents dying there-
18 after;
19 2. The Act applies to any proceedings in court then pend-
20 ing or thereafter commenced regardless of the time of the
21 death of decedent except to the extent that in the opinion
22 of the court the former procedure should be made applicable
23 in a particular case in the interest of justice or because
24 of infeasibility of application of the procedure of this Act;
25 3. Every personal representative including a person ad-
26 ministering an estate of a minor or incompetent holding an
27 appointment on that date, continues to hold the appointment
28 but has only the powers conferred by this Act and is subject
29 to the duties imposed with respect to any act occurring or
30 done thereafter;
31 4. An act done before the effective date in any proceed-
32 ing and any accrued right is not impaired by this Act. If
33 a right is acquired, extinguished or barred upon the expira-
34 tion of a prescribed period of time which has commenced to
35 run by the provisions of any statute before the effective

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date, the provisions shall remain in force with respect to that right;

5. Any rule of construction or presumption provided in this Act applies to instruments executed and multiple party accounts opened before the effective date unless there is a clear indication of a contrary intent.

Sec. 8102. Chapter six hundred thirty-three (633), Code 1973, is repealed.

Sec. 8103. This Act shall, insofar as possible, be included in the Code of Iowa as chapter six hundred thirty-three (633) with the section numbers of this Act as the section numbers of chapter six hundred thirty-three (633), and the Articles, Parts and descriptive word titles to be retained as in this Act.

EXPLANATION

This bill provides for the repeal of the Iowa Probate Code and enacts in lieu thereof the Uniform Probate Code.