# STATE OF NEW YORK

6388

2017-2018 Regular Sessions

# IN SENATE

May 12, 2017

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the surrogate's court procedure act, in relation to expedited collection of certain assets by affidavit

**The People of the State of New York, represented in Senate and Assembly, do enact as follows:**

Section 1. Section 1310 of the surrogate's court procedure act, paragraph (a) of subdivision 1 as amended by chapter 260 of the laws of 1968, subparagraphs (i) and (viii) of paragraph (a) of subdivision 1 as amended by chapter 69 of the laws of 1998, subparagraph (vi) of paragraph (a) subdivision 1 as further amended pursuant to section 104 of part A of chapter 62 of the laws of 2011, subdivisions 2, 3 and 4 as amended by chapter 514 of the laws of 1993, subdivision 6 as amended by chapter 685 of the laws of 1967, subdivision 7 as amended by chapter 190 of the laws of 1990, subdivision 8 as added and subdivision 9 as renumbered by chapter 41 of the laws of 1992, is amended to read as follows:

§ 1310. [~~Payment of certain debts without administration~~]
**Expedited collection of certain assets by affidavit**

1. As used in this section

(a) [~~"Debt"~~] **"Asset"** means

(i) money or securities payable on account of a deposit in a bank, national bank, trust company, branch of a foreign banking corporation, savings bank, industrial bank, state or federal savings and loan association or state or federal credit union or with a private banker, or funds or securities invested with, held by or deposited with a broker-dealer or with, by or in securities of a management type investment company or trust payable or returnable to, or to the estate of, or to a beneficiary designated by, the depositor or

(ii) money payable by a state or federal savings and loan association or state or federal credit union to, or to the estate of, or to a bene-

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets [-] is old law to be omitted.

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ficiary designated by, a member on account of the withdrawal value of his shares or

(iii) money payable by an insurance company or a savings bank authorized to conduct the business of life insurance under an annuity or pure endowment contract or a policy of life, group life, industrial life or accident and health insurance or a contract made by such an insurer, relating to the payment of proceeds or avails thereof, to, or to the estate of, or to a beneficiary designated by, the owner or the person purchasing the annuity or the person insured or the person effecting the insurance or the person effecting the supplemental contract or

(iv) money payable by a public corporation, a state or the federal government or an agency thereof, to, or to the estate of, or to a beneficiary designated by, any natural person or

(v) a pension or retirement or death benefit, profit share, earnings, wages, salary or bonus payable by an employer or by a pension, retirement or profit-sharing plan or system to, or to the estate of, or to a beneficiary designated by, an employee[~~,~~] or

(vi) a balance of money due on an accepted claim or account payable, on account of dividends payable by the superintendent of financial services in liquidation of bank assets[~~,~~] to, or to the estate of, or to a beneficiary designated by, a depositor or

(vii) any personal property deposited with a county treasurer by a coroner or county medical examiner pursuant to [~~sections 785 and 786 of the code of criminal procedure,~~] section six hundred seventy-eight of the county law or

(viii) any personal property on deposit with a hospital, nursing home, residential health care facility or out-patient lodge described in section twenty-eight hundred one of the public health law at the time of the death of a decedent that is payable or returnable to the estate of the decedent;

(b) [~~"Debtor"~~] "Holder" means the person or persons, partnership, corporation, government or government agency [~~by~~] from whom [~~a debt~~] an asset defined in this section is to be paid,

(c) [~~"Creditor"~~] "Decedent" means the employee, depositor, member, or other person, to whom, or to whose estate, or to a beneficiary designated by whom, [~~a debt~~] an asset defined in this section is to be paid [~~and shall include any beneficiary validly designated by such a creditor~~],

(d) A "designation of a beneficiary" means any writing, signed by the [~~creditor~~] decedent and delivered to the [~~debtor~~] holder purporting to designate the person to whom [~~a debt~~] an asset shall be paid on death of the [~~creditor~~] decedent or any transaction which operates pursuant to statute as such a designation.

2. [~~Upon the death of a creditor, unless~~] Unless otherwise provided by a designation of a beneficiary which is then in effect, it shall be lawful for the [~~debtor forthwith~~] holder to pay [~~to the surviving spouse of the decedent~~] not more than fifteen thousand dollars (or, in the case of a payment to the decedent's surviving spouse, not more than thirty thousand dollars) of the [~~debt, upon an affidavit made by the spouse showing that the payment and all other payments received by the spouse under this subdivision do not in the aggregate exceed thirty thousand dollars.~~] asset to:

(a) one or more of the following persons (but only if they are eighteen years of age or older), preference being given in the order named:

(i) the surviving spouse of the decedent,

(ii) the children of the decedent,

(iii) the grandchildren of the decedent,
(iv) the father or mother of the decedent,
(v) the brothers or sisters of the decedent,
(vi) the nieces or nephews of the decedent, or
(b) a creditor of the decedent or a person who has paid or incurred funeral expenses of the decedent, but only upon the direction of a then living relative of the decedent named in paragraph (a) of this subdivision, or
(c) not less than six months after the decedent's death, a distributee or, to the extent that the asset is not exempt from claims of creditors, a creditor of the decedent or a person who has paid or incurred funeral expenses of the decedent.
(d) Notwithstanding the foregoing, the total of all payments made under this section by all holders shall not in the aggregate exceed fifteen thousand dollars (or with respect to payments to the surviving spouse, shall not exceed thirty thousand dollars).

3. [~~Not less than thirty days after the death of a creditor, unless otherwise provided by a designation of a beneficiary which is then in effect, it shall be lawful for the debtor to pay not more than fifteen thousand dollars of the debt to~~
~~(a) the surviving spouse,~~
~~(b) one or more of the children eighteen years of age or older,~~
~~(c) the father or mother,~~
~~(d) the brother or sister,~~
~~(e) the niece or nephew of the decedent, preference being given in the order named if request for payment shall have been made by more than one such person,~~
~~(f) a creditor of the decedent or to a person who has paid or incurred the funeral expense of the decedent, upon the request of the surviving spouse or of one of such relatives.~~
~~Payment under this subdivision may be made upon an affidavit by the surviving spouse or relative to whom or at whose request the payment is made, showing~~
~~(i) the date of the death of the decedent,~~
~~(ii) the relationship of the affiant to the decedent,~~
~~(iii) that no fiduciary has qualified or been appointed,~~
~~(iv) the names and addresses of the persons entitled to and who will receive the money paid, and~~
~~(v) that such payment and all other payments made under this section by all debtors, known to the affiant, after diligent inquiry do not in the aggregate exceed fifteen thousand dollars. This subdivision does not limit the right of a debtor to make payment to a surviving spouse within less than thirty days after the death of the creditor as provided in subdivision two.~~] Payments under this section may be made only upon receipt by the holder of:
(a) an affidavit by the surviving spouse, relative to whom or at whose request the payment is made, or other such person or entity entitled to payment under subdivision 2 stating:
(i) the date of death of the descendent,
(ii) the relationship of the affiant to the descendent,
(iii) that no fiduciary has been appointed by a court of competent jurisdiction,
(iv) that, in the case of a payment to a relative named in paragraph (a) of subdivision 2, the decedent was not survived by a person whose priority under paragraph (a) of subdivision 2 is higher than the priority of such relative,

(v) the names and addresses of the persons or entities entitled to and who will receive the money paid,

(vi) that, in the case of a payment under paragraph (c) of subdivision 2, the affiant is entitled to the payment, and

(vii) that such payment and all other payments made under this section by all holders, known to the affiant, after diligent inquiry do not in the aggregate exceed fifteen thousand dollars (or with respect to payments to the surviving spouse, do not exceed thirty thousand dollars), and

(b) a certified copy of the decedent's death certificate.

4. [~~Not less than 6 months after the death of a creditor, unless otherwise provided by a designation of a beneficiary which is then in effect, it shall be lawful for the debtor to pay a debt which does not exceed $5,000, or any part of such debt, to a distributee or, to the extent that the funds are not exempt from claims of creditors, to a creditor or to a person who has paid or incurred the funeral expenses upon an affidavit made by the person paid showing~~

~~(a) the date of the death of the decedent,~~

~~(b) that no fiduciary has qualified or been appointed,~~

~~(c) that the decedent was not survived by a spouse or minor child,~~

~~(d) that the affiant is entitled to the payment, and~~

~~(e) that such payment and all other payments made under this section by all debtors, known to the affiant, after diligent inquiry, do not in the aggregate exceed $5,000.~~

~~5.~~] A payment made in good faith under this section shall be a complete discharge to the [~~debtor~~] holder to the extent of the payment, even though the affidavit on which payment is made be false[~~, and even though payment pursuant to subdivision 3 was not made in the order of preference indicated in that subdivision, provided only that the creditor be dead and that the required number of days elapse between death and payment and, in the case of a payment under subdivision 2 or subdivision 3 that the affiant in fact bear the stated relationship to the decedent and in the case of a payment under subdivision 4 that the affiant be in fact a distributee or creditor or have paid or incurred the funeral expenses~~].

[~~6.~~] 5. Any person or entity receiving payment pursuant to this section is accountable therefor to any one or more persons or entities whose priority under subdivision 2 is equal to or higher than the priority of the recipient, the fiduciary of the decedent if one be appointed or to the public administrator of the county having authority to take possession of the money or property constituting the [~~debt~~] asset except that a surviving spouse or child of the decedent entitled to have property set [~~aside~~] off to him or [~~to~~] her pursuant to EPTL 5-3.1 need not account [~~for such payments~~] to any such fiduciary or public administrator to the extent of the exemption provided [~~therein, and~~] in EPTL 5-3.1. In addition, to the extent that the amount [~~so~~] received under this section does not exceed the exemption in EPTL 5-3.1, such amount received hereunder shall be credited to such exemption.

[~~7.~~] 6. Nothing in this section shall deprive any person or entity of any right which he, she or it would otherwise have to receive payment of [~~a debt~~] an asset, except as against a [~~debtor~~] holder who has made a payment which is a discharge under subdivision [~~5~~] 4, nor shall anything in this section deprive any [~~debtor~~] holder of any right to make or refuse payment which it would otherwise have. This section does not limit article 26 of the tax law.

[~~8.~~] 7. It shall be lawful for the [~~debtor~~] holder to pay [~~a debt~~] an asset which does not exceed [~~five~~] fifteen thousand dollars or any part of such [~~debt~~] asset, under subdivision [~~four~~] 2 of this section, to the department of social services or a social services district where the [~~debt~~] asset is money payable on account of a deposit with the [~~debtor~~] holder for the personal needs of the [~~deceased creditor~~] decedent while residing in a medical institution or other facility, or otherwise, and the [~~deceased creditor~~] decedent is indebted to the department or district on account of medical assistance furnished to or on behalf of the [~~deceased creditor~~] decedent.

[~~9.~~] 8. This section applies only to [~~creditors~~] decedents who die on or after September 1, [~~1952~~] 2015.

§ 2. This act shall take effect immediately.