

**Section 1. Protection of wild animals in certain cases.**—That Mason's Minnesota Statutes of 1927, Section 5640, be and the same is hereby amended so as to read as follows:

"5640. Whenever the *Commissioner of Conservation*, after investigation by the *Director of the Division of Game and Fish*, finds that any species of wild animals, as defined herein, for which an open season is provided, is in danger of undue depletion or extinction, or when necessary for the proper protection or propagation of any protected wild animals, the *Commissioner of Conservation* may by an order giving 30 days public notice provide protection for such species, additional to that provided by law, and to that end, may prescribe restrictions as to in what numbers, and in what places the same may be taken and reduce in part or close in its entirety any open season provided for the taking of any protected wild animals. Provided, that no open season for the taking of any protected wild animals shall be declared otherwise than by legislative action. Any order issued by the *Commissioner of Conservation* pursuant to this section shall have the force of law and the penalties prescribed for violations of this chapter shall follow and be applicable to violations of any such order to same effect and extent respectively, as though such order had been enacted as a part of this chapter. No such order shall be valid after the close of the season affected by or for which such order was issued. Provided, however, the *Commissioner of Conservation* is authorized and shall have the power to make any and all regulations for the taking of fish from boundary waters between the State of Minnesota and the State of Wisconsin, and such regulations, when made, shall supersede any previously existing provisions."

Approved April 15, 1939.

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#### CHAPTER 270—S. F. No. 921

*An act to amend Laws 1935, Chapter 72, Section 29, Subsection 4, Subdivisions (d) and (e) as amended by Laws 1937, Chapter 435, Section 8, and Section 29, Subsection 5, as amended by Laws 1937, Chapter 435, Section 8; and Sections 103, 115, as amended by Laws 1937, Chapter 435, Section 13, 118, 119, 143, 164 Subsection 15, 174, and 183 relating to probate courts, the practice and procedure therein, descent and distribution, wills and the probate thereof, administration, guardianships, and commitments.*

Be it enacted by the Legislature of the State of Minnesota:

**Section 1. Descent of property.**—Laws 1935, Chapter 72, Section 29 subsection 4, subdivision (d), as amended by Laws 1937, Chapter 435, Section 8 is hereby amended to read as follows:

“If there be no surviving issue, spouse, father nor mother, then to the surviving brothers and sisters, *if any*, and to the issue of any deceased brother or sister *in equal shares if all are of equal degree and, if not, then in equal shares to those in the nearest degree and by right of representation to those in a more remote degree;*”

**Sec. 2. Descent of property.**—Laws 1935, Chapter 72, Section 29 subsection 4 subdivision (e) as amended by Laws 1937, Chapter 435, Section 8 is hereby amended to read as follows:

“If there be no surviving issue, spouse, father, mother, brother, sister, *nor issue of any deceased brother or sister*, then in equal shares to the next of kin in equal degree, except that when there are two or more collateral kindred in equal degree claiming through different ancestors, those who claim through the nearest ancestor shall take to the exclusion of those claiming through an ancestor more remote.”

**Sec. 3. Descent of property.**—Laws 1935, Chapter 72, Section 29 of subsection 5 as amended by Laws 1937, Chapter 435, Section 8 is hereby amended to read as follows:

“If a minor die leaving no spouse nor issue surviving, all of his estate that came to him by inheritance or will from his parent shall descend and be distributed to the other children of the same parent, *if any*, and to the issue of any deceased child of such parent *in equal shares if all are of equal degree and, if not, then in equal shares to those in the nearest degree and by right of representation to those in a more remote degree;* failing all such, it shall descend and be distributed by intestate succession as in other cases.”

**Sec. 4. Claims barred.**—Laws 1935, Chapter 72, Section 103 is hereby amended to read as follows:

“No claim or offset thereto shall be allowed which was barred by the statute of limitations *during the decedent's lifetime.*”

**Sec. 5. Hearing and decree.**—Laws 1935, Chapter 72, Section 115 as amended by Laws 1937, Chapter 435, Section 13 is hereby amended to read as follows:

“Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given pursuant to Article XIX, Section 188, except as provided in Sections 78, 114, and 125. Unless otherwise ordered, the representative shall, and other persons may, be examined relative to the account and the distribution of the estate. If all taxes payable by the estate have been paid so far as there are funds to pay them and the account is correct, it shall be settled and allowed; if incorrect, it shall be corrected and then settled and allowed.

Upon such settlement and allowance the court shall determine the persons entitled to the estate and assign the same to them by its decree. The decree shall name the heirs and the distributees, describe the property and state the proportion or part thereof to which each is entitled. In the estate of a testate decedent, no heirs shall be named in the decree unless all of the heirs be ascertained. No final decree shall be entered until after the determination and payment of inheritance taxes except as provided in Section 189.

If all of the creditors have consented in writing, the court with or without notice may assign the estate, if insolvent, without conversion thereof into money, to such creditors in the proportions to which each is entitled.

*If any liquidated demand for money arising on contract or if any unsatisfied judgment for the payment of money, whether or not unenforceable because of lapse of time or discharge in bankruptcy, exists in favor of decedent at the time of his death against an heir, legatee, or devisee, and not forgiven or otherwise specifically disposed of in the will, or if any judgment recovered by the representative against an heir, legatee, or devisee has not been paid during administration, the amount thereof shall be considered a part of the estate for purposes of distribution and taken by such heir, legatee, or devisee as a part of his share of the personalty.*

*If such amount exceeds such beneficiary's share of the personalty, the real property assigned to him shall be subjected in the decree to a lien in favor of the other heirs or beneficiaries in accordance with their respective shares.*

*If such demand or judgment became unenforceable prior to decedent's death, no interest after it became unenforceable shall be included and the total amount charged against such heirs, legatee, or devisee shall in no event exceed the value of his share of the estate. In the event of an escheat of part of*

*the estate no such lien shall be imposed upon any other part of the estate in favor of the State of Minnesota.*

*Any beneficiary hereunder shall not be required to pay any inheritance tax and no inheritance tax shall be payable as to him on that part of said estate created by the set-off hereinbefore provided and inherited by said beneficiary, which said beneficiary would not otherwise have been required by law to pay because said demand so set off was unenforceable as to said beneficiary because of lapse of time or a discharge in bankruptcy.*

Upon its own motion or upon the request of any party, without the determination or payment of inheritance taxes, the court may enter into an interlocutory decree, determining the persons entitled to the estate, naming the heirs and distributees describing the property and stating the proportion or part thereof to which each is entitled. Such interlocutory decree shall be final as to the persons entitled to distribution, and as to the part or portion of the estate each is entitled to receive, but it shall not have the effect of assigning the estate to such persons."

**Sec. 6. Allowance to representative.**—Laws 1935, Chapter 72, Section 118 is hereby amended to read as follows:

*"Every representative shall be allowed his necessary expenses incurred in the execution of his trust and shall have such compensation for his services as the court shall deem just and reasonable. An attorney performing services for the estate at the instance of the representative shall have such compensation therefor out of the estate as the court shall deem just and reasonable. Where, upon demand the representative refuses to prosecute or pursue a claim or asset of the estate or a claim is made against him on behalf of the estate and any party interested shall then by his own attorney prosecute or pursue and recover such fund or asset for the benefit of the estate, such attorney shall be allowed such compensation out of the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made. If a decedent by will makes provision for the compensation of his executor, that shall be taken as his full compensation unless he files a written instrument renouncing all claim for the compensation provided for in the will. Such amounts shall be allowed as credits to the representative in his account or at any time during administration, the representative may apply to the court by petition for an order directing the payment of his compensation (in whole or in part) out of the es-*

*tate, and any attorney having rendered services as aforesaid may by petition apply to the court for an order directing the payment to him (in whole or in part) of such attorney's fees out of the estate. Upon payment by the representative of the whole amount allowed his attorney by the court the representative shall be fully released and discharged from all liability on account of such attorney's services.*

Whenever any person named as executor in a will or codicil defends it or prosecutes any proceedings in good faith and with just cause, for the purpose of having it admitted to probate, whether successful or not, or if any person successfully oppose the allowance of any will or codicil, he shall be allowed out of the estate his necessary expenses and disbursements in such proceedings together with such compensation for his services and those of his attorneys as the court shall deem just and proper."

**Sec. 7. Attorney's lien.**—Laws 1935, Chapter 72, Section 119 is hereby amended to read as follows:

*"When any attorney at law has been retained to appear for any heir, devisee, or legatee, such attorney may perfect his lien upon the client's interest in the estate for compensation for such services as he may have rendered respecting such interest, by serving upon the representative before the decree of distribution, is made, a notice of his intent to claim a lien for his agreed compensation, or the reasonable value of his services, and by filing such notice with proof of service thereof. The perfecting of such a lien, as herein provided, shall have the same effect as the perfecting of a lien as provided in Section 5695, Mason's Minnesota Statutes, 1927, and such lien may be enforced and the amount thereupon determined in the manner therein provided."*

**Sec. 8. Restoration to capacity.**—Laws 1935, Chapter 72, Section 143 is hereby amended to read as follows:

*"Any person who has been adjudicated insane or inebriate, or any person who is under guardianship (except as a minor, or as a feebleminded or epileptic person, or a person under guardianship in the juvenile court), or his guardian, or any other person interested in him or his estate may petition the court in which he was so adjudicated to be restored to capacity. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the State Board of Control if he was under its control and*

has not been discharged by it, and to such other persons and in such manner as the court may direct.

Any person may oppose such restoration. Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, the court shall adjudge him restored to capacity.

*In proceedings for the restoration of an insane or inebriate person, the court may appoint two duly licensed doctors of medicine to assist in the determination of the mental capacity of the patient. The court shall allow and order paid to each doctor so appointed the sum of five dollars per day for his services and fifteen cents for each mile traveled. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof. If the court notifies the county attorney he shall attend the hearing and if he deems it for the best interest of the public he shall oppose the restoration in the probate court and appellate courts.*

If such person has been adjudged insane or inebriate by a court of a county wherein he had no settlement, the petition for restoration may be filed in the court of the county of his settlement in which shall be filed certified copies of such instruments of the file of the court of commitment as the court may direct. The court wherein restoration is granted or denied shall transmit to the court of commitment a certified copy of the order granting or denying restoration. The expenses of such certified copies and of such transmittal shall be paid by the county of such person's settlement. If the venue has been transferred, no proceedings need be had in the court from which the venue was transferred."

**Sec. 9. Appealable orders.**—Laws 1935, Chapter 72, Section 164, subsection 15, is hereby amended to read as follows:

*"An order made pursuant to Section 118 directing or refusing to direct the payment of representatives' fees or attorneys' fees, and in such case the representative and the attorney shall each be deemed an aggrieved party and entitled to take such appeal."*

**Sec. 10. Institution of proceedings.**—Laws 1935, Chapter 72, Section 174 is hereby amended to read as follows:

"Unless otherwise indicated by the context, the word 'patient' as used in this article means any person for whose commitment as an insane, inebriate, feeble-minded, or epileptic per-

son, proceedings have been instituted or completed. Any reputable citizen may file in the court of the county of the patient's settlement or presence a petition for commitment setting forth the name and address of the patient and of his nearest relatives and the reasons for the application. If the court determines it to be for the best interest of the patient or of his family or of the public, the court may direct the sheriff or any other person to apprehend the patient and to take him to and confine him for observation and examination, in any hospital or any other place or institution consenting to receive him in the county wherein the proceedings are pending.

*The person, hospital, or institution ordered by the court to make such apprehension, conveyance, or confinement, may execute the order on any day and at any time thereof, by using all necessary means, including the breaking open of any door, window or other part of the building, vehicle, boat or other place in which the patient is located, and the imposition of necessary restraint upon the person of such patient.*

Upon the filing of such petition, written notice thereof shall be given to the county attorney who shall appear for and protect the rights of the patient, unless other counsel has been retained by or for the patient. If the court determines that the patient is financially unable to obtain counsel and that the interests of the patient require counsel other than the county attorney, or if the county attorney be absent, ill, or disqualified, the court may appoint counsel for him. If the patient has no settlement in this state, all proceedings shall be stayed until the state board of control shall have consented thereto."

**Sec. 11. Restoration of feeble-minded and epileptics.—**Laws 1935, Chapter 72, Section 183 is hereby amended to read as follows:

"The state board of control may petition the court of commitment, or the court to which the venue has been transferred, for the restoration to capacity of a feebleminded or epileptic patient. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given as the court may direct. Upon proof of the petition, the court shall restore the patient to capacity.

Upon the filing of such petition by any person other than the state board of control and upon payment by the petitioner to such board all expenses in connection with the hearing in such amount as may be fixed by such board for the transportation, board, and lodging of the patient and authorized at-

tendants, the court shall fix the time and place for the hearing thereof, ten days' notice of which shall be given to the state board of control and to such other persons and in such manner as the court may direct. Any person may oppose such restoration. Upon proof that the patient is not feeble-minded or epileptic, the court shall order him restored to capacity at the expiration of thirty days from the date of service of such order upon the state board of control. If restoration be denied, the patient shall be remanded to the state board of control; if restoration be granted, he shall be so remanded for the thirty days aforesaid.

*The court may appoint two duly licensed doctors of medicine or two persons skilled in the ascertainment of mental deficiency to assist in the determination of the mental capacity of the patient. The court shall allow and order paid to each person so appointed the sum of five dollars per day for his services and fifteen cents for each mile traveled. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof. If the court notifies the county attorney he shall attend the hearing and if he deems it for the best interest of the public he shall oppose the restoration in the probate court and appellate courts."*

Approved April 15, 1939.

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#### CHAPTER 271—S. F. No. 960

*An act relating to primary elections in any village or city of the fourth class with a population of not less than 1,500 and located in a county having not less than 90 nor more than 100 full and fractional congressional townships; and to amend the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 317-1.*

Be it enacted by the Legislature of the State of Minnesota:

**Section 1. Primary elections in certain villages.**—The 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 317-1, is hereby amended so as to read as follows:

"317-1. Any village or city of the fourth class with a population of not less than 1,500 and located in a county having not less than 90 nor more than 100 full and fractional congressional townships may hold an election of nominees, hereinafter designated as the "primary election" for the purpose of