



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB3693

Introduced 2/24/2009, by Rep. Patricia R. Bellock

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/25-1

from Ch. 110 1/2, par. 25-1

755 ILCS 5/25-5 new

Amends the Probate Act of 1975. Provides that the small estate affidavit form must include a statement that Illinois law provides that persons are entitled to preference in the following order to prepare a small estate affidavit: surviving spouse; children; grandchildren; parents; brothers and sisters; nearest kindred; and the public administrator. Provides that the affiant must state which of these apply: no heir of the decedent has a superior preference to prepare the small estate affidavit; the heir with an identical or superior preference to prepare the affidavit has declined or refused to do so; or there is a reason that the affiant has prepared the affidavit rather than the person with an equal or superior preference. Requires that the affidavit include a notice stating that if several persons are claiming the right to prepare a small estate affidavit, a court may determine which one shall be entitled to do so. Provides that a person completing a small estate affidavit shall comply with these requirements included in the affidavit form.

LRB096 08521 AJO 18641 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing  
5 Section 25-1 and by adding Section 25-5 as follows:

6 (755 ILCS 5/25-1) (from Ch. 110 1/2, par. 25-1)

7 Sec. 25-1. Payment or delivery of small estate of decedent  
8 upon affidavit.

9 (a) When any person or corporation (1) indebted to or  
10 holding personal estate of a decedent, (2) controlling the  
11 right of access to decedent's safe deposit box or (3) acting as  
12 registrar or transfer agent of any evidence of interest,  
13 indebtedness, property or right is furnished with a small  
14 estate affidavit in substantially the form hereinafter set  
15 forth, that person or corporation shall pay the indebtedness,  
16 grant access to the safe deposit box, deliver the personal  
17 estate or transfer or issue the evidence of interest,  
18 indebtedness, property or right to persons and in the manner  
19 specified in paragraph 11 of the affidavit or to an agent  
20 appointed as hereinafter set forth.

21 (b) Small Estate Affidavit

22 I, (name of affiant) , on oath state:

23 1. (a) My post office address is: ;

1 (b) My residence address is: ; and

2 (c) I understand that, if I am an out-of-state  
3 resident, I submit myself to the jurisdiction of Illinois  
4 courts for all matters related to the preparation and use of  
5 this affidavit. My agent for service of process in Illinois is:

6 NAME.....

7 ADDRESS.....

8 CITY.....

9 TELEPHONE (IF ANY).....

10 I understand that if no person is named above as my agent for  
11 service or, if for any reason, service on the named person  
12 cannot be effectuated, the clerk of the circuit court of  
13 .....(County) (Judicial Circuit) Illinois is recognized by  
14 Illinois law as my agent for service of process.

15 2. The decedent's name is ;

16 3. The date of the decedent's death was , and I  
17 have attached a copy of the death certificate hereto.

18 4. The decedent's place of residence immediately before his  
19 death was ;

20 5. No letters of office are now outstanding on the  
21 decedent's estate and no petition for letters is contemplated  
22 or pending in Illinois or in any other jurisdiction, to my  
23 knowledge;

24 6. The gross value of the decedent's entire personal  
25 estate, including the value of all property passing to any  
26 party either by intestacy or under a will, does not exceed

1 \$100,000. (Here, list each asset, e.g., cash, stock, and its  
2 fair market value.);

3 7. (a) All of the decedent's funeral expenses have been  
4 paid, or (b) The amount of the decedent's unpaid funeral  
5 expenses and the name and post office address of each person  
6 entitled thereto are as follows:

7 Name and post office address	Amount
8 (Strike either 7(a) or 7(b)).	

9 8. There is no known unpaid claimant or contested claim  
10 against the decedent, except as stated in paragraph 7.

11 9. (a) The names and places of residence of any surviving  
12 spouse, minor children and adult dependent\* children of the  
13 decedent are as follows:

14 Name and	Place of	Age of
15 Relationship	Residence	minor child

16  
17 \* (Note: An adult dependent child is one who is unable to  
18 maintain himself and is likely to become a public charge.)

19 (b) The award allowable to the surviving spouse of a  
20 decedent who was an Illinois resident is \$..... (\$10,000,  
21 plus \$5,000 multiplied by the number of minor children and  
22 adult dependent children who resided with the surviving spouse  
23 at the time of the decedent's death. If any such child did not  
24 reside with the surviving spouse at the time of the decedent's  
25 death, so indicate).

1           (c) If there is no surviving spouse, the award allowable to  
 2 the minor children and adult dependent children of a decedent  
 3 who was an Illinois resident is \$..... (\$10,000, plus  
 4 \$5,000 multiplied by the number of minor children and adult  
 5 dependent children), to be divided among them in equal shares.

6           10. (a) The decedent left no will. The names, places of  
 7 residence and relationships of the decedent's heirs, and the  
 8 portion of the estate to which each heir is entitled under the  
 9 law where decedent died intestate are as follows:

10           Name, relationship	Age of	Portion of
11           and place of residence	minor	Estate
12	OR	

13

14           (b) The decedent left a will, which has been filed with the  
 15 clerk of an appropriate court. A certified copy of the will on  
 16 file is attached. To the best of my knowledge and belief the  
 17 will on file is the decedent's last will and was signed by the  
 18 decedent and the attesting witnesses as required by law and  
 19 would be admissible to probate. The names and places of  
 20 residence of the legatees and the portion of the estate, if  
 21 any, to which each legatee is entitled are as follows:

22           Name, relationship	Age of	Portion of
23           and place of residence	minor	Estate

24

25           (Strike either 10(a) or 10(b)).

1 (c) Affiant is unaware of any dispute or potential conflict  
2 as to the heirship or will of the decedent.

3 10.1. Illinois law provides that the following persons are  
4 entitled to preference, in the following order, in having the  
5 authority to prepare and present a small estate affidavit:

6 (a) The surviving spouse.

7 (b) The children.

8 (c) The grandchildren.

9 (d) The parents.

10 (e) The brothers and sisters.

11 (f) The nearest kindred.

12 (g) The Public Administrator.

13 I, ..... (the Affiant) state that my relationship to  
14 the decedent is ..... and (check all that apply):

15 ... No heir of the decedent is entitled to prepare a small  
16 estate affidavit for the decedent in equal or superior  
17 preference to the Affiant, according to the order of preference  
18 set forth in paragraphs (a) through (g) above; or

19 ... The heir of the decedent entitled to prepare a small  
20 estate affidavit for the decedent in equal or superior  
21 preference to the Affiant is ..... and that person has  
22 declined, refused, or asked me to prepare the small estate  
23 affidavit; or



1 without court approval, to gain access to, sell, and distribute  
2 the property for the benefit of all persons named in paragraph  
3 11 of the affidavit; and the payment, delivery, transfer,  
4 access or issuance shall be made or granted to or on the order  
5 of the agent.

6 (d) Release. Upon payment, delivery, transfer, access or  
7 issuance pursuant to a properly executed affidavit, the person  
8 or corporation is released to the same extent as if the  
9 payment, delivery, transfer, access or issuance had been made  
10 or granted to the representative of the estate. Such person or  
11 corporation is not required to see to the application or  
12 disposition of the property; but each person to whom a payment,  
13 delivery, transfer, access or issuance is made or given is  
14 answerable therefor to any person having a prior right and is  
15 accountable to any representative of the estate.

16 (e) The affiant signing the small estate affidavit prepared  
17 pursuant to subsection (b) of this Section shall indemnify and  
18 hold harmless all creditors and heirs of the decedent and other  
19 persons relying upon the affidavit who incur loss because of  
20 such reliance. That indemnification shall only be up to the  
21 amount lost because of the act or omission of the affiant. Any  
22 person recovering under this subsection (e) shall be entitled  
23 to reasonable attorney's fees and the expenses of recovery.

24 (f) The affiant of a small estate affidavit who is a  
25 non-resident of Illinois submits himself or herself to the  
26 jurisdiction of Illinois courts for all matters related to the

1 preparation or use of the affidavit. The affidavit shall  
2 provide the name, address, and phone number of a person whom  
3 the affiant names as his agent for service of process. If no  
4 such person is named or if, for any reason, service on the  
5 named person cannot be effectuated, the clerk of the circuit  
6 court of the county or judicial circuit of which the decedent  
7 was a resident at the time of his death shall be the agent for  
8 service of process.

9 (g) Any action properly taken under this Section, as  
10 amended by Public Act 93-877, on or after August 6, 2004 (the  
11 effective date of Public Act 93-877) is valid regardless of the  
12 date of death of the decedent.

13 (Source: P.A. 93-877, eff. 8-6-04; 94-57, eff. 6-17-05.)

14 (755 ILCS 5/25-5 new)

15 Sec. 25-5. Persons entitled to preference.

16 (a) The following persons are entitled to preference, in  
17 the following order, in having the authority to prepare and  
18 present a small estate affidavit:

19 (1) The surviving spouse.

20 (2) The children.

21 (3) The grandchildren.

22 (4) The parents.

23 (5) The brothers and sisters.

24 (6) The nearest kindred.

25 (7) The Public Administrator.

1       (b) The affiant shall state his or her relationship to the  
2 decedent and shall include in the affidavit, as applicable: his  
3 or her statement that no heir of the decedent is entitled to  
4 prepare a small estate affidavit for the decedent in equal or  
5 superior preference to the affiant; an identification of the  
6 heir of the decedent entitled to prepare a small estate  
7 affidavit for the decedent in equal or superior preference to  
8 the affiant, and a statement that that person declined,  
9 refused, or requested that the affiant prepare the small estate  
10 affidavit; and the reason that the affiant prepared the small  
11 estate affidavit rather than the person having an equal or  
12 superior preference to the affiant.

13       (c) When several persons are claiming the right to prepare  
14 a small estate affidavit, and have equal preference in  
15 entitlement to do so, a court may determine which of them is  
16 entitled to prepare the small estate affidavit.