



Rep. Mary E. Flowers

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LRB099 07473 HEP 33318 a

1 AMENDMENT TO HOUSE BILL 3287

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3287 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by changing  
5 Section 25-1 and adding Section 11-13.4 as follows:

6 (755 ILCS 5/11-13.4 new)

7 Sec. 11-13.4. Financial institution; guardianship accounts  
8 established on behalf of minors.

9 (a) If an account at a financial institution is a  
10 guardianship account established on behalf of a minor, disabled  
11 adult, or elderly person, the terms of the account must provide  
12 for compliance with orders of the court, if any, regarding the  
13 establishment and management of that account. A financial  
14 institution has a duty to inquire as to the existence of any  
15 court orders when opening a guardianship account on behalf of a  
16 minor. If the financial institution holds an account that is

1 subject to a court order, the financial institution must obtain  
2 a court order granting the authority to release funds from the  
3 account. An order authorizing the disbursement of funds in the  
4 account may be granted only upon a showing of good cause.

5 (b) A guardian of a minor, disabled adult, or elderly  
6 person that establishes an account with a financial institution  
7 on behalf of the minor, disabled adult, or elderly person  
8 pursuant to a court order has a duty to present the court order  
9 to the financial institution at the time the account is opened.

10 (c) The creation of and any withdrawals from a guardianship  
11 account established on behalf of a minor, disabled adult, or  
12 elderly person that is subject to this Section requires the  
13 signatures of 2 adult persons.

14 (d) A withdrawal of more than \$5,000 from a guardianship  
15 account established on behalf of a minor, disabled adult, or  
16 elderly person that is subject to this Section requires a court  
17 order.

18 (e) As used in this Section, "financial institution"  
19 includes, but is not limited to, a bank, credit union,  
20 investment company, savings bank, savings and loan  
21 association, securities dealer, and trust company.

22 (755 ILCS 5/25-1) (from Ch. 110 1/2, par. 25-1)

23 Sec. 25-1. Payment or delivery of small estate of decedent  
24 upon affidavit.

25 (a) When any person, corporation, or financial institution

1 (1) indebted to or holding personal estate of a decedent, (2)  
2 controlling the right of access to decedent's safe deposit box  
3 or (3) acting as registrar or transfer agent of any evidence of  
4 interest, indebtedness, property or right is furnished with a  
5 small estate affidavit in substantially the form hereinafter  
6 set forth, that person, corporation, or financial institution,  
7 upon examining and approving the documents presented by the  
8 affiant which are attached to the small estate affidavit, shall  
9 pay the indebtedness, grant access to the safe deposit box,  
10 deliver the personal estate or transfer or issue the evidence  
11 of interest, indebtedness, property or right to persons and in  
12 the manner specified in the affidavit or to an agent appointed  
13 as hereinafter set forth.

14 (a-5) A person, corporation, or financial institution may  
15 not pay the indebtedness, grant access to the safe deposit box,  
16 deliver the personal estate, or transfer or issue the evidence  
17 of interest, indebtedness, property or right as provided in  
18 subsection (a) of this Section, unless the affiant, or his or  
19 her agent, has first obtained a court order as provided in this  
20 subsection (a-5). A judge shall grant an order under this  
21 subsection (a-5) if the affiant presents: (i) the small estate  
22 affidavit; (ii) evidence of notice having been given to the  
23 heirs or legatees identified in paragraph 10 of the affidavit;  
24 and (iii) a petition asking the court to find that the  
25 affidavit does not appear to have been fraudulently executed  
26 and to grant access to property in the manner specified in

1 paragraph 11 of the affidavit. A person, corporation, or  
2 financial institution has a duty to inquire as to the existence  
3 of any court orders before taking action under this Section.

4 (b) Small Estate Affidavit

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

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

7 (b) My residence address is: ; and

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

12 NAME.....  
13 ADDRESS.....  
14 CITY.....  
15 TELEPHONE (IF ANY).....

16 I understand that if no person is named above as my agent for  
17 service or, if for any reason, service on the named person  
18 cannot be effectuated, the clerk of the circuit court of  
19 .....(County) (Judicial Circuit) Illinois is recognized by  
20 Illinois law as my agent for service of process.

21 2. The decedent's name is ;

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

24 4. The decedent's place of residence immediately before his  
25 death was ;

26 5. No letters of office are now outstanding on the

1 decedent's estate and no petition for letters is contemplated  
2 or pending in Illinois or in any other jurisdiction, to my  
3 knowledge;

4 6. The gross value of the decedent's entire personal  
5 estate, including the value of all property passing to any  
6 party either by intestacy or under a will, does not exceed  
7 \$100,000. (Here, list each asset, e.g., cash, stock, and its  
8 fair market value.);

9 7. (a) All of the decedent's burial and funeral expenses  
10 and other debts have been paid, or

11 (b) All of the decedent's known unpaid debts are listed and  
12 classified as follows (include the name, post office address,  
13 and amount):

14 Class 1: funeral and burial expenses, which include  
15 reasonable amounts paid for a burial space, crypt, or  
16 niche; a marker on the burial space; and care of the burial  
17 space, crypt, or niche; expenses of administration; and  
18 statutory custodial claims as follows:

19 .....

20 Class 2: the surviving spouse's award or child's award, if  
21 applicable, as follows:

22 .....

23 Class 3: debts due the United States, as follows:

24 .....

25 Class 4: money due employees of the decedent of not more  
26 than \$800 for each claimant for services rendered within 4

1 months prior to the decedent's death and expenses attending  
2 the last illness, as follows:

3 .....

4 Class 5: money and property received or held in trust by  
5 the decedent which cannot be identified or traced, as  
6 follows:

7 .....

8 Class 6: debts due the State of Illinois and any county,  
9 township, city, town, village, or school district located  
10 within Illinois, as follows:

11 .....

12 Class 7: all other claims, including medical and credit  
13 card bills, as follows:

14 .....

15 (Strike either 7(a) or 7(b)).

16 7.5. I understand that all valid claims against the  
17 decedent's estate described in paragraph 7 must be paid by me  
18 from the decedent's estate before any distribution is made to  
19 any heir or legatee. I further understand that the decedent's  
20 estate should pay all claims in the order set forth above, and  
21 if the decedent's estate is insufficient to pay the claims in  
22 any one class, the claims in that class shall be paid pro rata.

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

25 9. (a) The names and places of residence of any surviving  
26 spouse, minor children and adult dependent\* children of the

1 decedent are as follows:

2	Name and	Place of	Age of
3	Relationship	Residence	minor child

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

6 (b) The award allowable to the surviving spouse of a  
7 decedent who was an Illinois resident is \$..... (\$20,000,  
8 plus \$10,000 multiplied by the number of minor children and  
9 adult dependent children who resided with the surviving spouse  
10 at the time of the decedent's death. If any such child did not  
11 reside with the surviving spouse at the time of the decedent's  
12 death, so indicate).

13 (c) If there is no surviving spouse, the award allowable to  
14 the minor children and adult dependent children of a decedent  
15 who was an Illinois resident is \$..... (\$20,000, plus  
16 \$10,000 multiplied by the number of minor children and adult  
17 dependent children), to be divided among them in equal shares.  
18 If there is no surviving spouse and there are minor children, a  
19 disabled adult, or elderly relatives, the affiant must be a  
20 court appointed guardian for one or more of the children,  
21 disabled adult, or elderly person. If this provision applies,  
22 the date of the court order making this appointment was  
23 ....., and I have attached a copy of the court order.

24 10. (a) The decedent left no will. The names, places of  
25 residence and relationships of the decedent's heirs, and the

1 portion of the estate to which each heir is entitled under the  
 2 law, after all just debts and expenses described in paragraph 7  
 3 are fully paid, where decedent died intestate are as follows:

4	Name, relationship	Age of	Portion of
5	and place of residence	minor	Estate
6		OR	

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

15	Name, relationship	Age of	Portion of
16	and place of residence	minor	Estate

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

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

20 10.1. I, .....(the affiant) state that I am the  
 21 surviving spouse and the decedent and I resided together as  
 22 husband and wife and we were not legally separated, or  
 23 otherwise separated, at the time of decedent's death.

24 10.2. I, ..... (the affiant) state that my  
 25 relationship to the decedent is ..... and (check

1 all that apply):

2 ... there is no surviving spouse; or

3 ... there is a surviving spouse, but the surviving spouse is:

4 ... unable to prepare the small estate affidavit for  
5 medical reasons as shown by the attached letter of a physician  
6 for the surviving spouse, based upon the physician's  
7 examination of the surviving spouse within 90 days prior to the  
8 date of the affidavit, attesting to and describing this  
9 disabling medical condition; or

10 ... has declined, refused, or asked affiant to prepare the  
11 small estate affidavit. The reason that the affiant has  
12 prepared this small estate affidavit rather than the surviving  
13 spouse is that (state here the precise time, date, and  
14 circumstances of the surviving spouse declining, refusing, or  
15 asking affiant to prepare the small estate affidavit):

16 .....

17 Attached is a statement of the surviving spouse in which  
18 the surviving spouse expressly declines or states that he or  
19 she refuses to prepare the small estate affidavit or expressly  
20 requests that the affiant prepare the small estate affidavit.  
21 This statement must be signed by the surviving spouse,  
22 witnessed by 2 persons unrelated to the affiant, and be  
23 notarized.

24 ~~10.3. My relationship to the decedent or the decedent's~~  
25 ~~estate is as follows: .....~~

26 10.5. (The following paragraph should appear in bold type

1 and in not less than 14-point font):

2 I understand that the decedent's estate must be  
3 distributed first to satisfy claims against the decedent's  
4 estate as set forth in paragraph 7.5 of this affidavit  
5 before any distribution is made to any heir or legatee. By  
6 signing this affidavit, I agree to indemnify and hold  
7 harmless all creditors of the decedent's estate, the  
8 decedent's heirs and legatees, and other persons,  
9 corporations, or financial institutions relying upon this  
10 affidavit who incur any loss because of reliance on this  
11 affidavit, up to the amount lost because of any act or  
12 omission by me. I further understand that any person,  
13 corporation, or financial institution recovering under  
14 this indemnification provision shall be entitled to  
15 reasonable attorney's fees and the expenses of recovery.

16 11. After payment by me from the decedent's estate of all  
17 debts and expenses listed in paragraph 7, any remaining  
18 property described in paragraph 6 of this affidavit should be  
19 distributed as follows:

20 Name Specific sum or property to be distributed

21 The foregoing statement is made under the penalties of  
22 perjury\*.

23 .....

1 Signature of Affiant

2 Signed and sworn before me on (insert date).

3 .....

4 Notary Public

5 \* (Note: A fraudulent statement made under the penalties of  
6 perjury is perjury, as defined in Section 32-2 of the Criminal  
7 Code of 2012.)

8 (c) Appointment of Agent. If safe deposit access is  
9 involved or if sale of any personal property is desirable to  
10 facilitate distribution pursuant to the small estate  
11 affidavit, the affiant under the small estate affidavit may in  
12 writing appoint one or more persons as the affiant's agent for  
13 that purpose, provided that the writing contains the signature  
14 of each person, is witnessed by 2 persons unrelated to the  
15 affiant and is notarized, and also shows the written consent of  
16 the surviving spouse and all adult children. The agent shall  
17 have power, with ~~without~~ court approval, to gain access to,  
18 sell, and distribute the property in the manner specified in  
19 paragraphs 7.5 and 11 of the affidavit; and the payment,  
20 delivery, transfer, access or issuance shall be made or granted  
21 to or on the order of the agent. The affiant may appoint  
22 himself or herself as the designated representative to exercise  
23 the powers and perform the duties of an agent described in this  
24 subsection (c).

25 (c-5) The affiant of a small estate affidavit shall submit

1 to the court proof of payment of all valid claims against the  
2 decedent's estate described in paragraph 7.

3 (d) Reliance and Release. Any person, corporation, or  
4 financial institution who, upon examination and approval of all  
5 documents presented by the affiant with this small estate  
6 affidavit, acts in good faith reliance on a copy of a document  
7 purporting to be a small estate affidavit that is substantially  
8 in compliance with subsection (b) of this Section shall be  
9 fully protected and released upon payment, delivery, transfer,  
10 access or issuance pursuant to such a document to the same  
11 extent as if the payment, delivery, transfer, access or  
12 issuance had been made or granted to the representative of the  
13 estate. Such person, corporation, or financial institution is  
14 not required to see to the application or disposition of the  
15 property; but each person to whom a payment, delivery,  
16 transfer, access or issuance is made or given is answerable  
17 therefor to any person having a prior right and is accountable  
18 to any representative of the estate.

19 (e) Distributions pursuant to an affidavit substantially  
20 in the form set forth in subsection (b) of this Section may be  
21 made to the affiant, if so specified in paragraph 11,  
22 notwithstanding the disclosure of known unpaid debts. The  
23 affiant, acting on behalf of the decedent's estate, is  
24 obligated to pay all valid claims against the decedent's estate  
25 before any distribution is made to any heir or legatee. The  
26 affiant signing the small estate affidavit prepared pursuant to

1 subsection (b) of this Section shall indemnify and hold  
2 harmless all creditors, heirs, and legatees of the decedent and  
3 other persons, corporations, or financial institutions relying  
4 upon the affidavit who incur loss because of such reliance.  
5 That indemnification shall only be up to the amount lost  
6 because of the act or omission of the affiant. Any person,  
7 corporation, or financial institution recovering under this  
8 subsection (e) shall be entitled to reasonable attorney's fees  
9 and the expenses of recovery.

10 (f) The affiant of a small estate affidavit who is a  
11 non-resident of Illinois submits himself or herself to the  
12 jurisdiction of Illinois courts for all matters related to the  
13 preparation or use of the affidavit. The affidavit shall  
14 provide the name, address, and phone number of a person whom  
15 the affiant names as his agent for service of process. If no  
16 such person is named or if, for any reason, service on the  
17 named person cannot be effectuated, the clerk of the circuit  
18 court of the county or judicial circuit of which the decedent  
19 was a resident at the time of his death shall be the agent for  
20 service of process.

21 (f-5) If the affiant makes distributions from the estate in  
22 violation of this Section, an heir or legatee may file with the  
23 court an affidavit, under penalty of perjury, alleging the  
24 facts which constitute making distributions from the estate in  
25 violation of this Section. The affidavit shall be accompanied  
26 by any evidence the heir or legatee has to support his or her

1 claim. If the court determines that distributions from the  
2 estate have been made in violation of this Section, the court  
3 shall enter an order directing all persons or entities which  
4 received a distribution under the affidavit to submit any  
5 property received to the clerk of the circuit court within 30  
6 days of the order. The court shall then commence proceedings to  
7 determine the proper distribution of the estate and enter  
8 orders for the distribution of the property in accordance with  
9 this Section.

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

14 (h) The changes made by this amendatory Act of the 96th  
15 General Assembly apply to a decedent whose date of death is on  
16 or after the effective date of this amendatory Act of the 96th  
17 General Assembly.

18 (i) The changes made by this amendatory Act of the 98th  
19 General Assembly apply to a decedent whose date of death is on  
20 or after the effective date of this amendatory Act of the 98th  
21 General Assembly.

22 (Source: P.A. 97-1150, eff. 1-25-13; 98-836, eff. 1-1-15.)".