

SB0083



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

SB0083

Introduced 1/17/2025, by Sen. Doris Turner

SYNOPSIS AS INTRODUCED:

755 ILCS 5/25-1

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

Amends the Small Estates Article of the Probate Act of 1975. Allows a small estate affidavit to be used to transfer personal property in a decedent's estate if: (1) no letters of office are outstanding on the decedent's estate and no petition for letters is contemplated or pending in the State or in any other jurisdiction; and (2) the decedent's personal estate passing to any party by intestacy or under a will is limited to tangible and intangible personal property not exceeding \$150,000 and motor vehicles registered with the Secretary of State. Makes a corresponding change in the form for a small estate affidavit. Provides that the changes made to the Act apply to a decedent whose date of death is on or after the effective date of the amendatory Act. Effective immediately.

LRB104 02999 LNS 13017 b

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

21 (a-5) The small estate affidavit set forth in subsection
22 (b) may be used to transfer personal property in a decedent's
23 estate if:

(1) no letters of office are outstanding on the decedent's estate and no petition for letters is contemplated or pending in this State or in any other jurisdiction; and

(2) the decedent's personal estate passing to any party by intestacy or under a will is limited to:

(A) excluding motor vehicles registered with the Secretary of State, tangible and intangible personal property not exceeding \$150,000; and

(B) motor vehicles registered with the Secretary
of State.

(b) Small Estate Affidavit

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

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

(b) My residence address is: _____; and

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

NAME

ADDRESS.....

CITY.....

TELEPHONE (IF ANY)

I understand that if no person is named above as my agent for service or, if for any reason, service on the named person

1 cannot be effectuated, the clerk of the circuit court of
2(County) (Judicial Circuit) Illinois is recognized by
3 Illinois law as my agent for service of process.

4 2. The decedent's name is ;

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

7 4. The decedent's place of residence immediately before
8 his death was ;

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

13 6. Excluding motor vehicles registered with the Secretary
14 of State, the decedent's entire personal estate ~~The gross~~
15 ~~value of the decedent's entire personal estate, including the~~
16 ~~value of all property~~ passing to any party either by intestacy
17 or under a will, does not exceed \$150,000 ~~\$100,000~~. (Here,
18 list each asset, e.g., cash, stock, and its fair market
19 value.);

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

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

25 Class 1: funeral and burial expenses, which include
26 reasonable amounts paid for a burial space, crypt, or

1 niche; a marker on the burial space; and care of the burial
2 space, crypt, or niche; expenses of administration; and
3 statutory custodial claims as follows:

4
5 Class 2: the surviving spouse's award or child's award, if
6 applicable, as follows:

7
8 Class 3: debts due the United States, as follows:

9
10 Class 4: money due employees of the decedent of not more
11 than \$800 for each claimant for services rendered within 4
12 months prior to the decedent's death and expenses
13 attending the last illness, as follows:

14
15 Class 5: money and property received or held in trust by
16 the decedent which cannot be identified or traced, as
17 follows:

18
19 Class 6: debts due the State of Illinois and any county,
20 township, city, town, village, or school district located
21 within Illinois, as follows:

22
23 Class 7: all other claims, as follows:

24
25 (Strike either 7(a) or 7(b)).

26 7.5. I understand that all valid claims against the

1 decedent's estate described in paragraph 7 must be paid by me
2 from the decedent's estate before any distribution is made to
3 any heir or legatee. I further understand that the decedent's
4 estate should pay all claims in the order set forth above, and
5 if the decedent's estate is insufficient to pay the claims in
6 any one class, the claims in that class shall be paid pro rata.

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

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

12	Name and	Place of	Age of
13	Relationship	Residence	minor child

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

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

23 (c) If there is no surviving spouse, the award allowable
24 to the minor children and adult dependent children of a
25 decedent who was an Illinois resident is \$..... (\$20,000,

1 plus \$10,000 multiplied by the number of minor children and
2 adult dependent children), to be divided among them in equal
3 shares.

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

8 Name, relationship	Age of	Portion of
9 and place of residence	minor	Estate

10 OR

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

19 Name, relationship	Age of	Portion of
20 and place of residence	minor	Estate

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

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

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

1 10.5. (The following paragraph should appear in bold type
2 and in not less than 14-point font):

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

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

21	Name	Specific sum or property to be distributed
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22 The foregoing statement is made under the penalties of
23 perjury*.

1
2

Signature of Affiant

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

4
5

Notary Public

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

9 (c) Appointment of Agent. If safe deposit access is
10 involved or if sale of any personal property is desirable to
11 facilitate distribution pursuant to the small estate
12 affidavit, the affiant under the small estate affidavit may in
13 writing appoint one or more persons as the affiant's agent for
14 that purpose. The agent shall have power, without court
15 approval, to gain access to, sell, and distribute the property
16 in the manner specified in paragraphs 7.5 and 11 of the
17 affidavit; and the payment, delivery, transfer, access or
18 issuance shall be made or granted to or on the order of the
19 agent. The affiant may appoint himself or herself as the
20 designated representative to exercise the powers and perform
21 the duties of an agent described in this subsection (c).

22 (d) Reliance and Release. Any person, corporation, or
23 financial institution who acts in good faith reliance on a
24 copy of a document purporting to be a small estate affidavit
25 that is substantially in compliance with subsection (b) of

1 this Section shall be fully protected and released upon
2 payment, delivery, transfer, access or issuance pursuant to
3 such a document to the same extent as if the payment, delivery,
4 transfer, access or issuance had been made or granted to the
5 representative of the estate. Such person, corporation, or
6 financial institution is not required to see to the
7 application or disposition of the property; but each person to
8 whom a payment, delivery, transfer, access or issuance is made
9 or given is answerable therefor to any person having a prior
10 right and is accountable to any representative of the estate.

11 (e) Distributions pursuant to an affidavit substantially
12 in the form set forth in subsection (b) of this Section may be
13 made to the affiant, if so specified in paragraph 11,
14 notwithstanding the disclosure of known unpaid debts. The
15 affiant, acting on behalf of the decedent's estate, is
16 obligated to pay all valid claims against the decedent's
17 estate before any distribution is made to any heir or legatee.
18 The affiant signing the small estate affidavit prepared
19 pursuant to subsection (b) of this Section shall indemnify and
20 hold harmless all creditors, heirs, and legatees of the
21 decedent and other persons, corporations, or financial
22 institutions relying upon the affidavit who incur loss because
23 of such reliance. That indemnification shall only be up to the
24 amount lost because of the act or omission of the affiant. Any
25 person, corporation, or financial institution recovering under
26 this subsection (e) shall be entitled to reasonable attorney's

1 fees and the expenses of recovery.

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

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

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

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

25 (j) The changes made by this amendatory Act of the 104th
26 General Assembly apply to a decedent whose date of death is on

1 or after the effective date of this amendatory Act of the 104th
2 General Assembly.

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

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.