



Sen. Doris Turner

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10400SB0083sam001

LRB104 02999 JRC 22505 a

1 AMENDMENT TO SENATE BILL 83

2 AMENDMENT NO. _____. Amend Senate Bill 83 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 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

1 box, deliver the personal estate or transfer or issue the
2 evidence of interest, indebtedness, property or right to
3 persons and in the manner specified in the affidavit or to an
4 agent appointed as hereinafter set forth.

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

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

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

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

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

19 For purposes of this Section, if the small estate
20 affidavit as set forth in subsection (b) is being used solely
21 for a title transaction with the Secretary of State for the
22 transfer of the decedent's motor vehicles, it may be used to
23 transfer those motor vehicles in accordance with subsection
24 (b) of Section 3-114 of Illinois Vehicle Code without
25 consideration of the value of the decedent's personal estate.

26 (b) Small Estate Affidavit

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

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

3 (b) My residence address is: ; and

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

9 NAME.....

10 ADDRESS.....

11 CITY.....

12 TELEPHONE (IF ANY).....

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

18 2. The decedent's name is ;

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

21 4. The decedent's place of residence immediately before
22 his death was ;

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

1 6. (a) Excluding motor vehicles registered with the
2 Secretary of State, the decedent's entire personal estate ~~The~~
3 ~~gross value of the decedent's entire personal estate,~~
4 ~~including the value of all property~~ passing to any party
5 either by intestacy or under a will, ~~7~~ does not exceed \$150,000
6 ~~\$100,000~~. (Here, list each asset, e.g., cash, stock, and its
7 fair market value.); and

8 (b) Any motor vehicles registered with the Secretary of
9 State in the decedent's entire personal estate passing to any
10 party either by intestacy or under a will. (Here, list a
11 description of each motor vehicle by make, body type, year,
12 and vehicle identification number.);

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

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

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

23

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

26

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

2

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

7

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

11

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

15

16 Class 7: all other claims, as follows:

17

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

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

26 8. There is no known unpaid claimant or contested claim

1 against the decedent, except as stated in paragraph 7.

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

5 Name and	Place of	Age of
6 Relationship	Residence	minor child

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

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

16 (c) If there is no surviving spouse, the award allowable
17 to the minor children and adult dependent children of a
18 decedent who was an Illinois resident is \$..... (\$20,000,
19 plus \$10,000 multiplied by the number of minor children and
20 adult dependent children), to be divided among them in equal
21 shares.

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

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

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

Name, relationship and place of residence	Age of minor	Portion of Estate
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(Strike either 10(a) or 10(b)).

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

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

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

I understand that the decedent's estate must be distributed first to satisfy claims against the decedent's estate as set forth in paragraph 7.5 of this affidavit before any distribution is made to any heir or legatee. By signing this affidavit, I agree to indemnify and hold

1 harmless all creditors of the decedent's estate, the
2 decedent's heirs and legatees, and other persons,
3 corporations, or financial institutions relying upon this
4 affidavit who incur any loss because of reliance on this
5 affidavit, up to the amount lost because of any act or
6 omission by me. I further understand that any person,
7 corporation, or financial institution recovering under
8 this indemnification provision shall be entitled to
9 reasonable attorney's fees and the expenses of recovery.

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

14	Name	Specific sum or property to be distributed
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15 The foregoing statement is made under the penalties of
16 perjury*.

17

18 Signature of Affiant

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

20

21 Notary Public

22 *(Note: A fraudulent statement made under the penalties of

1 perjury is perjury, as defined in Section 32-2 of the Criminal
2 Code of 2012.)

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

16 (d) Reliance and Release. Any person, corporation, or
17 financial institution who acts in good faith reliance on a
18 copy of a document purporting to be a small estate affidavit
19 that is substantially in compliance with subsection (b) of
20 this Section shall be fully protected and released upon
21 payment, delivery, transfer, access or issuance pursuant to
22 such a document to the same extent as if the payment, delivery,
23 transfer, access or issuance had been made or granted to the
24 representative of the estate. Such person, corporation, or
25 financial institution is not required to see to the
26 application or disposition of the property; but each person to

1 whom a payment, delivery, transfer, access or issuance is made
2 or given is answerable therefor to any person having a prior
3 right and is accountable to any representative of the estate.

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

21 (f) The affiant of a small estate affidavit who is a
22 non-resident of Illinois submits himself or herself to the
23 jurisdiction of Illinois courts for all matters related to the
24 preparation or use of the affidavit. The affidavit shall
25 provide the name, address, and phone number of a person whom
26 the affiant names as his agent for service of process. If no

1 such person is named or if, for any reason, service on the
2 named person cannot be effectuated, the clerk of the circuit
3 court of the county or judicial circuit of which the decedent
4 was a resident at the time of his death shall be the agent for
5 service of process.

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

10 (h) The changes made by this amendatory Act of the 96th
11 General Assembly apply to a decedent whose date of death is on
12 or after the effective date of this amendatory Act of the 96th
13 General Assembly.

14 (i) The changes made by this amendatory Act of the 98th
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 98th
17 General Assembly.

18 (j) The changes made by this amendatory Act of the 104th
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 104th
21 General Assembly.

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

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."