



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB0460

Introduced 2/16/2005, by Sen. Richard J. Winkel, Jr.

SYNOPSIS AS INTRODUCED:

755 ILCS 5/25-1

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

Amends provisions of the Probate Act of 1975 concerning small estate affidavits. Provides that any action properly taken under those provisions, as amended by Public Act 93-877 (which increased the permissible maximum value of the decedent's personal estate from \$50,000 to \$100,000), on or after the effective date of that Public Act is valid regardless of the date of death of the decedent. Effective immediately.

LRB094 04968 WGH 34998 b

1 AN ACT concerning estates.

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 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: ;

24 (b) My residence address is: ; and

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

29 NAME.....
30 ADDRESS.....
31 CITY.....
32 TELEPHONE (IF ANY).....

1 I understand that if no person is named above as my agent for
 2 service or, if for any reason, service on the named person
 3 cannot be effectuated, the clerk of the circuit court of
 4(County) (Judicial Circuit) Illinois is recognized by
 5 Illinois law as my agent for service of process.

6 2. The decedent's name is ;

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

9 4. The decedent's place of residence immediately before his
 10 death was ;

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

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

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

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

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

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

31 Name and Place of Age of
 32 Relationship Residence minor child

33

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

1 (b) The award allowable to the surviving spouse of a
 2 decedent who was an Illinois resident is \$..... (\$10,000,
 3 plus \$5,000 multiplied by the number of minor children and
 4 adult dependent children who resided with the surviving spouse
 5 at the time of the decedent's death. If any such child did not
 6 reside with the surviving spouse at the time of the decedent's
 7 death, so indicate).

8 (c) If there is no surviving spouse, the award allowable to
 9 the minor children and adult dependent children of a decedent
 10 who was an Illinois resident is \$..... (\$10,000, plus
 11 \$5,000 multiplied by the number of minor children and adult
 12 dependent children), to be divided among them in equal shares.

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

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

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

| | | |
|------------------------|--------|------------|
| Name, relationship | Age of | Portion of |
| and place of residence | minor | Estate |

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

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

35 11. The property described in paragraph 6 of this affidavit
 36 should be distributed as follows:

| | | |
|---|------|--|
| 1 | Name | Specific sum or property to be distributed |
|---|------|--|

2

3

4 The foregoing statement is made under the penalties of
5 perjury* .

6

.....

7

Signature of Affiant

8

* (Note: A fraudulent statement made under the penalties of
9 perjury is perjury, as defined in Section 32-2 of the Criminal
10 Code of 1961.)

11

(c) Appointment of Agent. If safe deposit access is
12 involved or if sale of any personal property is desirable to
13 facilitate distribution pursuant to the small estate
14 affidavit, all persons named in paragraph 11 of the small
15 estate affidavit (excluding minors and unascertained or
16 disabled persons) may in writing appoint one or more persons as
17 their agent for that purpose. The agent shall have power,
18 without court approval, to gain access to, sell, and distribute
19 the property for the benefit of all persons named in paragraph
20 11 of the affidavit; and the payment, delivery, transfer,
21 access or issuance shall be made or granted to or on the order
22 of the agent.

23

(d) Release. Upon payment, delivery, transfer, access or
24 issuance pursuant to a properly executed affidavit, the person
25 or corporation is released to the same extent as if the
26 payment, delivery, transfer, access or issuance had been made
27 or granted to the representative of the estate. Such person or
28 corporation is not required to see to the application or
29 disposition of the property; but each person to whom a payment,
30 delivery, transfer, access or issuance is made or given is
31 answerable therefor to any person having a prior right and is
32 accountable to any representative of the estate.

33

(e) The affiant signing the small estate affidavit prepared
34 pursuant to subsection (b) of this Section shall indemnify and
35 hold harmless all creditors and heirs of the decedent and other
36 persons relying upon the affidavit who incur loss because of

1 such reliance. That indemnification shall only be up to the
2 amount lost because of the act or omission of the affiant. Any
3 person recovering under this subsection (e) shall be entitled
4 to reasonable attorney's fees and the expenses of recovery.

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

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

20 (Source: P.A. 93-877, eff. 8-6-04.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.