



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB5161

Introduced 1/29/2010, by Rep. Robert W. Pritchard

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/15-1	from Ch. 110 1/2, par. 15-1
755 ILCS 5/15-2	from Ch. 110 1/2, par. 15-2
755 ILCS 5/25-1	from Ch. 110 1/2, par. 25-1

Amends the Probate Act of 1975. Provides that the minimum surviving spouse award is \$20,000 (instead of \$10,000) with an additional minimum award of \$10,000 (instead of \$5,000) for a surviving minor child or an adult dependent child. Effective immediately.

LRB096 16089 AJO 35395 b

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 Sections 15-1, 15-2, and 25-1 as follows:

6 (755 ILCS 5/15-1) (from Ch. 110 1/2, par. 15-1)

7 Sec. 15-1. Spouse's award.

8 (a) The surviving spouse of a deceased resident of this  
9 State whose estate, whether testate or intestate, is  
10 administered in this State, shall be allowed as the surviving  
11 spouse's own property, exempt from the enforcement of a  
12 judgment, garnishment or attachment in the possession of the  
13 representative, a sum of money that the court deems reasonable  
14 for the proper support of the surviving spouse for the period  
15 of 9 months after the death of the decedent in a manner suited  
16 to the condition in life of the surviving spouse and to the  
17 condition of the estate and an additional sum of money that the  
18 court deems reasonable for the proper support, during that  
19 period, of minor and adult dependent children of the decedent  
20 who reside with the surviving spouse at the time of decedent's  
21 death. The award may in no case be less than \$20,000 ~~\$10,000~~,  
22 together with an additional sum not less than \$10,000 ~~\$5,000~~  
23 for each such child. The award shall be paid to the surviving

1 spouse at such time or times, not exceeding 3 installments, as  
2 the court directs. If the surviving spouse dies before the  
3 award for his support is paid in full, the amount unpaid shall  
4 be paid to his estate. If the surviving spouse dies or abandons  
5 a child before the award for the support of a child is paid in  
6 full, the amount unpaid shall be paid for the benefit of the  
7 child to such person as the court directs.

8 (b) The surviving spouse is entitled to the award unless  
9 the will of the decedent expressly provides that the provisions  
10 thereof for the surviving spouse are in lieu of the award and  
11 the surviving spouse does not renounce the will.

12 (Source: P.A. 87-287.)

13 (755 ILCS 5/15-2) (from Ch. 110 1/2, par. 15-2)

14 Sec. 15-2. Child's award.

15 (a) If a minor or adult dependent child of the decedent  
16 does not reside with the surviving spouse of the decedent at  
17 the time of decedent's death, there shall be allowed to that  
18 child, exempt from the enforcement of a judgment, garnishment  
19 or attachment in the possession of the representative, a sum of  
20 money that the court deems reasonable for the proper support of  
21 the child for the period of 9 months after the death of the  
22 decedent, in a manner suited to the condition in life of the  
23 minor child and to the condition of the estate. The award may  
24 in no case be less than \$10,000 ~~\$5,000~~ and shall be paid for  
25 the benefit of the child to such person as the court directs.

1 (b) If a deceased resident of this State leaves no  
2 surviving spouse, there shall be allowed to all children of the  
3 decedent who were minors at the date of death and all adult  
4 dependent children, exempt from the enforcement of a judgment,  
5 garnishment or attachment in the possession of the  
6 representative, a sum of money that the court deems reasonable  
7 for the proper support of those children for the period of 9  
8 months after the death of the decedent in a manner suited to  
9 the condition in life of those children and to the condition of  
10 the estate. The award may in no case be less than \$10,000  
11 ~~\$5,000~~ for each of those children, together with an additional  
12 sum not less than \$20,000 ~~\$10,000~~ that shall be divided equally  
13 among those children or apportioned as the court directs and  
14 that shall be paid for the benefit of any of those children to  
15 any person that the court directs.

16 (Source: P.A. 87-287.)

17 (755 ILCS 5/25-1) (from Ch. 110 1/2, par. 25-1)

18 Sec. 25-1. Payment or delivery of small estate of decedent  
19 upon affidavit.

20 (a) When any person or corporation (1) indebted to or  
21 holding personal estate of a decedent, (2) controlling the  
22 right of access to decedent's safe deposit box or (3) acting as  
23 registrar or transfer agent of any evidence of interest,  
24 indebtedness, property or right is furnished with a small  
25 estate affidavit in substantially the form hereinafter set

1     forth, that person or corporation shall pay the indebtedness,  
 2     grant access to the safe deposit box, deliver the personal  
 3     estate or transfer or issue the evidence of interest,  
 4     indebtedness, property or right to persons and in the manner  
 5     specified in paragraph 11 of the affidavit or to an agent  
 6     appointed as hereinafter set forth.

7             (b)             Small Estate Affidavit

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

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

10         (b) My residence address is:                             ; and

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

15                                     NAME.....

16                                     ADDRESS.....

17                                     CITY.....

18                                     TELEPHONE (IF ANY).....

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

24         2. The decedent's name is                     ;

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

1           4. The decedent's place of residence immediately before his  
 2 death was                                 ;

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

7           6. The gross value of the decedent's entire personal  
 8 estate, including the value of all property passing to any  
 9 party either by intestacy or under a will, does not exceed  
 10 \$100,000. (Here, list each asset, e.g., cash, stock, and its  
 11 fair market value.);

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

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

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

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

23                                 Name and                                 Place of                                 Age of  
 24                                 Relationship                                 Residence                                 minor child  
 25

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

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

10 (c) If there is no surviving spouse, the award allowable to  
11 the minor children and adult dependent children of a decedent  
12 who was an Illinois resident is \$..... (\$20,000 ~~\$10,000~~,  
13 plus \$10,000 ~~\$5,000~~ multiplied by the number of minor children  
14 and adult dependent children), to be divided among them in  
15 equal shares.

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

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

22 OR

23

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

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

11  
 12 (Strike either 10(a) or 10(b)).

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

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

17	Name	Specific sum or property to be distributed
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18 The foregoing statement is made under the penalties of  
 19 perjury\*.

20 .....  
 21 Signature of Affiant

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



1 (c) Appointment of Agent. If safe deposit access is  
2 involved or if sale of any personal property is desirable to  
3 facilitate distribution pursuant to the small estate  
4 affidavit, all persons named in paragraph 11 of the small  
5 estate affidavit (excluding minors and unascertained or  
6 disabled persons) may in writing appoint one or more persons as  
7 their agent for that purpose. The agent shall have power,  
8 without court approval, to gain access to, sell, and distribute  
9 the property for the benefit of all persons named in paragraph  
10 11 of the affidavit; and the payment, delivery, transfer,  
11 access or issuance shall be made or granted to or on the order  
12 of the agent.

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

23 (e) The affiant signing the small estate affidavit prepared  
24 pursuant to subsection (b) of this Section shall indemnify and  
25 hold harmless all creditors and heirs of the decedent and other  
26 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; 94-57, eff. 6-17-05.)

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