



## 98TH GENERAL ASSEMBLY

### State of Illinois

### 2013 and 2014

### SB2985

Introduced 2/4/2014, by Sen. Tim Bivins

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/25-1  
755 ILCS 15/1

from Ch. 110 1/2, par. 25-1  
from Ch. 17, par. 1501

Amends the Probate Act of 1975. Requires a person executing a small estate affidavit to list and classify the debts of the decedent. Provides that all valid claims against the decedent's estate must be paid before any distribution is made to any heir or legatee. Provides that the decedent's estate should pay all claims in the order set forth in the listed classifications, and if the decedent's estate is insufficient to pay the claims in any one class, the claims in that class shall be paid pro rata. Requires the affiant to describe his or her relationship to the decedent or decedent's estate. Requires the affiant to agree to indemnify and hold harmless persons and entities who incur any loss because of reliance on the affidavit, up to the amount lost because of any act or omission by the affiant. Requires the affiant to state that any person, corporation, or financial institution recovering under the new provisions shall be entitled to reasonable attorney's fees and the expenses of recovery. Provides that the small estate affidavit shall be notarized. Provides that parties that act in good faith reliance on a copy of a document purporting to be a small estate affidavit shall be fully protected and released upon fulfillment of requirements under such a document to the same extent as if the party had been complying with requests of the representative of the estate. Provides that distributions pursuant to an affidavit may be made to the affiant notwithstanding the disclosure of known unpaid debts. Provides that the affiant (instead of other specified persons) may in writing appoint one or more persons, or himself or herself, to access the safe deposit box of a decedent. Adds applicability language. Makes corresponding changes. Amends the Safety Deposit Box Opening Act. Provides that the lessor of a safety deposit box shall not open the box in accordance with the Act if the lessor has received a copy of a small estate affidavit. Provides that the lessor shall authorize a representative of a decedent's estate or a person designated in a small estate affidavit, upon presentation of letters of office, other applicable court order, or small estate affidavit, to open the box and examine and remove the contents.

LRB098 19713 HEP 54924 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 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, or financial  
10 institution (1) indebted to or holding personal estate of a  
11 decedent, (2) controlling the right of access to decedent's  
12 safe deposit box or (3) acting as registrar or transfer agent  
13 of any evidence of interest, indebtedness, property or right is  
14 furnished with a small estate affidavit in substantially the  
15 form hereinafter set forth, that person, ~~or~~ corporation, or  
16 financial institution shall pay the indebtedness, grant access  
17 to the safe deposit box, deliver the personal estate or  
18 transfer or issue the evidence of interest, indebtedness,  
19 property or right to persons and in the manner specified in  
20 ~~paragraph 11 of~~ the affidavit or to an agent appointed as  
21 hereinafter set forth.

22 (b) Small Estate Affidavit

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

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

2                   (b) My residence address is: \_\_\_\_\_ ; and

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

7   NAME.....

8   ADDRESS.....

9   CITY.....

10    TELEPHONE (IF ANY).....

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

16           2. The decedent's name is \_\_\_\_\_ ;

17           3. The date of the decedent's death was \_\_\_\_\_ , and I  
18 have attached a copy of the death certificate hereto.

19           4. The decedent's place of residence immediately before his  
20 death was \_\_\_\_\_ ;

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

25           6. The gross value of the decedent's entire personal  
26 estate, including the value of all property passing to any

1 party either by intestacy or under a will, does not exceed  
2 \$100,000. (Here, list each asset, e.g., cash, stock, and its  
3 fair market value.);

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

6 (b) All ~~The amount~~ of the decedent's known unpaid debts are  
7 listed and classified as follows (include the name, post office  
8 address, and amount) ~~funeral expenses and the name and post~~  
9 ~~office address of each person entitled thereto are as follows:~~

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

15 .....

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

18 .....

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

20 .....

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

25 .....

26 Class 5: money and property received or held in trust by

1 the decedent which cannot be identified or traced, as  
2 follows:

3 .....  
4 Class 6: debts due the State of Illinois and any county,  
5 township, city, town, village, or school district located  
6 within Illinois, as follows:

7 .....  
8 Class 7: all other claims, as follows:

9 .....  
10 (Strike either 7(a) or 7(b)).

11 ~~Name and post office address~~ Amount  
12 ~~(Strike either 7(a) or 7(b)).~~

13 7.5. I understand that all valid claims against the  
14 decedent's estate described in paragraph 7 must be paid by me  
15 from the decedent's estate before any distribution is made to  
16 any heir or legatee. I further understand that the decedent's  
17 estate should pay all claims in the order set forth above, and  
18 if the decedent's estate is insufficient to pay the claims in  
19 any one class, the claims in that class shall be paid pro rata.

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

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

25 Name and Place of Age of  
26 Relationship Residence minor child

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 plus \$10,000 multiplied by the number of minor children and  
6 adult dependent children who resided with the surviving spouse  
7 at the time of the decedent's death. If any such child did not  
8 reside with the surviving spouse at the time of the decedent's  
9 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, plus  
13 \$10,000 multiplied by the number of minor children and adult  
14 dependent children), to be divided among them in equal shares.

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

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

22 (b) The decedent left a will, which has been filed with the  
23 clerk of an appropriate court. A certified copy of the will on  
24 file is attached. To the best of my knowledge and belief the  
25 will on file is the decedent's last will and was signed by the

1 decedent and the attesting witnesses as required by law and  
 2 would be admissible to probate. The names and places of  
 3 residence of the legatees and the portion of the estate, if  
 4 any, to which each legatee is entitled are as follows:

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

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

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

10 10.3. My relationship to the decedent or the decedent's  
 11 estate is as follows: .....

12 10.5. (The following paragraph should appear in bold type  
 13 and in not less than 14-point font):

14 I understand that the decedent's estate must be  
 15 distributed first to satisfy claims against the decedent's  
 16 estate as set forth in paragraph 7.5 of this affidavit  
 17 before any distribution is made to any heir or legatee. By  
 18 signing this affidavit, I agree to indemnify and hold  
 19 harmless all creditors of the decedent's estate, the  
 20 decedent's heirs and legatees, and other persons,  
 21 corporations, or financial institutions relying upon this  
 22 affidavit who incur any loss because of reliance on this  
 23 affidavit, up to the amount lost because of any act or  
 24 omission by me. I further understand that any person,  
 25 corporation, or financial institution recovering under

1 this indemnification provision shall be entitled to  
2 reasonable attorney's fees and the expenses of recovery.

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

7 Name Specific sum or property to be distributed

8 The foregoing statement is made under the penalties of  
9 perjury\* .

10 .....

11 Signature of Affiant

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

13 .....

14 Notary Public

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

18 (c) Appointment of Agent. If safe deposit access is  
19 involved or if sale of any personal property is desirable to  
20 facilitate distribution pursuant to the small estate  
21 affidavit, the affiant under the small estate affidavit ~~all~~  
22 ~~persons named in paragraph 11 of the small estate affidavit~~



1 ~~(excluding minors and unascertained or disabled persons)~~ may in  
2 writing appoint one or more persons as the affiant's ~~their~~  
3 agent for that purpose. The agent shall have power, without  
4 court approval, to gain access to, sell, and distribute the  
5 property in the manner specified in paragraphs 7.5 and ~~for the~~  
6 ~~benefit of all persons named in paragraph~~ 11 of the affidavit;  
7 and the payment, delivery, transfer, access or issuance shall  
8 be made or granted to or on the order of the agent. The affiant  
9 may appoint himself or herself as the designated representative  
10 to exercise the powers and perform the duties of an agent  
11 described in this subsection (c).

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

1 estate.

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

19 (f) The affiant of a small estate affidavit who is a  
20 non-resident of Illinois submits himself or herself to the  
21 jurisdiction of Illinois courts for all matters related to the  
22 preparation or use of the affidavit. The affidavit shall  
23 provide the name, address, and phone number of a person whom  
24 the affiant names as his agent for service of process. If no  
25 such person is named or if, for any reason, service on the  
26 named person cannot be effectuated, the clerk of the circuit

1 court of the county or judicial circuit of which the decedent  
2 was a resident at the time of his death shall be the agent for  
3 service of process.

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

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

12 (i) The changes made by this amendatory Act of the 98th  
13 General Assembly apply to a decedent whose date of death is on  
14 or after the effective date of this amendatory Act of the 98th  
15 General Assembly.

16 (Source: P.A. 96-968, eff. 7-2-10; 97-1150, eff. 1-25-13.)

17 Section 10. The Safety Deposit Box Opening Act is amended  
18 by changing Section 1 as follows:

19 (755 ILCS 15/1) (from Ch. 17, par. 1501)

20 Sec. 1. Upon being furnished with satisfactory proof of  
21 death of a sole lessee or the last surviving co-lessee of a  
22 safe deposit box, the lessor shall open the box and examine the  
23 contents in the presence of a person who presents himself and  
24 furnishes an affidavit which states that (a) he is interested

1 in the filing of the lessee's will or in the arrangements for  
2 his burial, (b) he believes the box may contain the will or  
3 burial documents of the lessee and (c) he is an interested  
4 person within the meaning of this Act. The lessor shall not  
5 open the box in accordance with this Act if the lessor has  
6 received a copy of letters of office of the representative of  
7 the deceased lessee's estate, ~~or~~ other applicable court order,  
8 or a small estate affidavit in accordance with Article XXV of  
9 the Probate Act of 1975. The lessor need not open the box if  
10 (a) the box has previously been opened in accordance with this  
11 Act, (b) the lessor has received notice of a written or oral  
12 objection from any person or has reason to believe that there  
13 would be an objection, or (c) the lessee's key or combination  
14 is not available. The lessor shall authorize a representative  
15 of a decedent's estate or a person designated in a small estate  
16 affidavit pursuant to Article XXV of the Probate Act of 1975,  
17 upon presentation of letters of office, other applicable court  
18 order, or small estate affidavit, to open the box and examine  
19 and remove the contents.

20 For purposes of this Act, the term "interested person"  
21 means any person who immediately prior to the death of the  
22 lessee had the right of access to the box as a deputy, any  
23 person named as executor in a copy furnished by him of a  
24 purported will of the lessee, or the spouse, an adult  
25 descendant, parent, brother or sister of the lessee. If the  
26 affidavit states that none of the persons described above is

1 available to be present at the opening of the box, the term  
2 "interested person" also means any other person who the lessor  
3 in its sole discretion determines may have a legitimate  
4 interest in the filing of the lessee's will or in the  
5 arrangements for his burial.

6 The lessor shall remove any document which appears to be a  
7 will or codicil and deliver it to the clerk of the circuit  
8 court for the county in which the lessee resided immediately  
9 prior to his or her death, if known to the lessor, otherwise to  
10 the clerk of the circuit court for the county in which the safe  
11 deposit box is located. Delivery of a will or codicil called  
12 for herein may be made by registered mail sent to the clerk of  
13 the said court. The lessor may remove any burial documents and  
14 deliver them to the interested person. No other contents may be  
15 removed pursuant to this Act.

16 The lessor is not required to look into the truth of any  
17 statement in the affidavit required to be furnished under  
18 section one of this Act. The lessor's determination of the fact  
19 situations to be met under this act shall be conclusive and  
20 final. The lessor shall be fully protected in relying  
21 conclusively on it.

22 (Source: P.A. 83-642.)