



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0738

Introduced 2/8/2007, by Sen. Randall "Randy" M. Hultgren

SYNOPSIS AS INTRODUCED:

735 ILCS 5/13-209

from Ch. 110, par. 13-209

Amends the Code of Civil Procedure. Provides that when a person dies before an action is filed against him or her, a court may appoint a special representative for that decedent, against whom an action may be brought without opening an estate. Deletes a provision requiring notice to heirs or legatees as the court directs, and provides instead that the plaintiff must notify all known heirs or legatees of the decedent by U.S. mail. Provides that any interested person may be substituted as the special representative for good cause shown. Provides that proceeding under this provision shall not bar the estate from filing counterclaims. Deletes a provision limiting recovery to proceeds of any liability insurance available to the estate. Provides that these changes apply to actions commenced or pending on or after the effective date of this amendatory Act. Effective immediately.

LRB095 10859 AJO 31134 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 Code of Civil Procedure is amended by
5 changing Section 13-209 as follows:

6 (735 ILCS 5/13-209) (from Ch. 110, par. 13-209)
7 Sec. 13-209. Death of party.

8 (a) If a person entitled to bring an action dies before the
9 expiration of the time limited for the commencement thereof,
10 and the cause of action survives:

11 (1) an action may be commenced by his or her
12 representative before the expiration of that time, or
13 within one year from his or her death whichever date is the
14 later;

15 (2) if no petition for letters of office for the
16 decedent's estate has been filed, the court may appoint a
17 special representative for the deceased for the purpose of
18 prosecuting the action. The appointment shall be on
19 verified motion of any party who appears entitled to
20 participate in the deceased's estate, reciting the names
21 and last known addresses of all known heirs and the
22 legatees and executor named in any will that has been
23 filed. The court's determination that a person appears

1 entitled to participate in the deceased's estate shall be
2 solely for purposes of this Section and not determinative
3 of rights in final disposition. Within 90 days after
4 appointment, the special representative shall notify the
5 heirs and legatees of the following information by mail:
6 that an appointment has been made, the court in which the
7 case was filed, the caption of the case, and a description
8 of the nature of the case. The special representative shall
9 publish notice to unknown heirs and legatees as provided in
10 the Probate Act of 1975. If a will is filed within 90 days
11 after the appointment of the special representative, the
12 same notice shall be given to any additional executors and
13 legatees named in the will. At any time that an estate is
14 opened with a representative other than the special
15 representative, the court may upon motion substitute the
16 representative for the special representative. In this
17 case, the court shall allow disbursements and fees of the
18 special representative and his or her attorney as a claim
19 against any proceeds received. The proceeds of any judgment
20 or settlement shall be distributed under the provisions of
21 the Probate Act of 1975.

22 (b) If a person against whom an action may be brought dies
23 before an action is filed against him or her, and before the
24 expiration of the time limited for the commencement thereof,
25 and the cause of action survives, and is not otherwise barred:

26 (1) an action may be commenced against his or her

1 personal representative after the expiration of the time
2 limited for the commencement of the action, and within 6
3 months after the person's death;

4 (2) if no petition has been filed for letters of office
5 for the deceased's estate, the court, upon the motion of a
6 person entitled to bring an action, ~~and after the notice to~~
7 ~~the party's heirs or legatees as the court directs and~~
8 without opening an estate, may appoint a special
9 representative for the deceased party for the purposes of
10 defending the action. Proceeding under this provision ~~If a~~
11 ~~party elects to have a special representative appointed~~
12 ~~under this paragraph (2), the recovery shall be limited to~~
13 ~~the proceeds of any liability insurance protecting the~~
14 ~~estate and shall not bar the estate from enforcing any~~
15 claims that might have been available to it as
16 counterclaims.

17 (3) After appointment of the special representative
18 for the deceased party, plaintiff shall give notice of the
19 appointment by U.S. mail to all known heirs or legatees of
20 the decedent.

21 (4) Any interested person may be substituted as the
22 special representative for good cause shown.

23 (c) If a party commences an action against a deceased
24 person whose death is unknown to the party before the
25 expiration of the time limited for the commencement thereof,
26 and the cause of action survives, and is not otherwise barred,

1 the action may be commenced against the deceased person's
2 personal representative if all of the following terms and
3 conditions are met:

4 (1) After learning of the death, the party proceeds
5 with reasonable diligence to move the court for leave to
6 file an amended complaint, substituting the personal
7 representative as defendant.

8 (2) The party proceeds with reasonable diligence to
9 serve process upon the personal representative.

10 (3) If process is served more than 6 months after the
11 issuance of letters of office, liability of the estate is
12 limited as to recovery to the extent the estate is
13 protected by liability insurance.

14 (4) In no event can a party commence an action under
15 this subsection (c) unless a personal representative is
16 appointed and an amended complaint is filed within 2 years
17 of the time limited for the commencement of the original
18 action.

19 The changes to this Section made by this amendatory Act of
20 the 95th General Assembly apply to actions commenced or pending
21 on or after the effective date of this amendatory Act of the
22 95th General Assembly.

23 (Source: P.A. 90-111, eff. 7-14-97.)

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