



Sen. Don Harmon

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09600SB1716sam001

LRB096 04132 AJ0 24782 a

1 AMENDMENT TO SENATE BILL 1716

2 AMENDMENT NO. _____. Amend Senate Bill 1716 by replacing
3 everything after the enacting clause with the following:

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 ~~the~~ expiration of the time limited for the commencement
10 thereof, 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

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

1 or settlement shall be distributed under the provisions of
2 the Probate Act of 1975.

3 (b) If a person against whom an action may be brought dies
4 before the expiration of the time limited for the commencement
5 thereof, and the cause of action survives, and is not otherwise
6 barred:

7 (1) an action may be commenced against his or her
8 personal representative after the expiration of the time
9 limited for the commencement of the action, and within 6
10 months after the person's death;

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

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