



Sen. Heather A. Steans

Filed: 4/9/2014

09800SB1049sam001

LRB098 07180 HEP 57989 a

1 AMENDMENT TO SENATE BILL 1049

2 AMENDMENT NO. _____. Amend Senate Bill 1049 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Probate Act of 1975 is amended by changing
5 Section 25-1 and adding Section 11-13.4 as follows:

6 (755 ILCS 5/11-13.4 new)

7 Sec. 11-13.4. Financial institution; guardianship accounts
8 established on behalf of minors.

9 (a) If an account at a financial institution is a
10 guardianship account established on behalf of a minor, the
11 terms of the account must provide for compliance with orders of
12 the court, if any, regarding the establishment and management
13 of that account. A financial institution has a duty to inquire
14 as to the existence of any court orders when opening a
15 guardianship account on behalf of a minor. If the financial
16 institution holds an account that is subject to a court order,

1 the financial institution must obtain a court order granting
2 the authority to release funds from the account. An order
3 authorizing the disbursement of funds in the account may be
4 granted only upon a showing of good cause.

5 (b) A guardian of a minor that establishes an account with
6 a financial institution on behalf of the minor pursuant to a
7 court order has a duty to present the court order to the
8 financial institution at the time the account is opened.

9 (c) As used in this Section, "financial institution"
10 includes, but is not limited to, a bank, credit union,
11 investment company, savings bank, savings and loan
12 association, securities dealer, and trust company.

13 (755 ILCS 5/25-1) (from Ch. 110 1/2, par. 25-1)

14 Sec. 25-1. Payment or delivery of small estate of decedent
15 upon affidavit.

16 (a) When any person, ~~or~~ corporation, or financial
17 institution (1) indebted to or holding personal estate of a
18 decedent, (2) controlling the right of access to decedent's
19 safe deposit box or (3) acting as registrar or transfer agent
20 of any evidence of interest, indebtedness, property or right is
21 furnished with a small estate affidavit in substantially the
22 form hereinafter set forth, that person, ~~or~~ corporation, or
23 financial institution, upon examining and approving the
24 documents presented by the affiant which are attached to the
25 small estate affidavit, shall pay the indebtedness, grant

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

6 (a-5) A person, corporation, or financial institution may
7 not pay the indebtedness, grant access to the safe deposit box,
8 deliver the personal estate, or transfer or issue the evidence
9 of interest, indebtedness, property or right as provided in
10 subsection (a) of this Section, unless the affiant, or his or
11 her agent, has first obtained a court order as provided in this
12 subsection (a-5). A judge shall grant an order under this
13 subsection (a-5) if the affiant presents: (i) the small estate
14 affidavit; (ii) evidence of notice having been given to the
15 heirs or legatees identified in paragraph 10 of the affidavit;
16 and (iii) a petition asking the court to find that the
17 affidavit does not appear to have been fraudulently executed
18 and to grant access to property in the manner specified in
19 paragraph 11 of the affidavit. A person, corporation, or
20 financial institution has a duty to inquire as to the existence
21 of any court orders before taking action under this Section.

22 (b) Small Estate Affidavit

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

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

25 (b) My residence address is: ; and

26 (c) I understand that, if I am an out-of-state

1 resident, I submit myself to the jurisdiction of Illinois
2 courts for all matters related to the preparation and use of
3 this affidavit. My agent for service of process in Illinois is:

4 NAME.....
5 ADDRESS.....
6 CITY.....
7 TELEPHONE (IF ANY).....

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

13 2. The decedent's name is ;

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

16 4. The decedent's place of residence immediately before his
17 death was ;

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

22 6. The gross value of the decedent's entire personal
23 estate, including the value of all property passing to any
24 party either by intestacy or under a will, does not exceed
25 \$100,000. (Here, list each asset, e.g., cash, stock, and its
26 fair market value.);

1 7. (a) All of the decedent's burial and funeral expenses
 2 have been paid, or (b) The amount of the decedent's unpaid
 3 burial and funeral expenses, medical bills, credit card bills,
 4 and real property taxes and the name and post office address of
 5 each person entitled thereto are as follows:

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

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

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

13 Name and	Place of	Age of
14 Relationship	Residence	minor child

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

17 (b) The award allowable to the surviving spouse of a
 18 decedent who was an Illinois resident is \$..... (\$20,000,
 19 plus \$10,000 multiplied by the number of minor children and
 20 adult dependent children who resided with the surviving spouse
 21 at the time of the decedent's death. If any such child did not
 22 reside with the surviving spouse at the time of the decedent's
 23 death, so indicate).

24 (c) If there is no surviving spouse, the award allowable to
 25 the minor children and adult dependent children of a decedent
 26 who was an Illinois resident is \$..... (\$20,000, plus

1 \$10,000 multiplied by the number of minor children and adult
 2 dependent children), to be divided among them in equal shares.
 3 If there is no surviving spouse and there are minor children,
 4 the affiant must be a court appointed guardian for one or more
 5 of the children. If this provision applies, the date of the
 6 court order making this appointment was, and I have
 7 attached a copy of the court order.

8 10. (a) The decedent left no will. The names, places of
 9 residence and relationships of the decedent's heirs, and the
 10 portion of the estate to which each heir is entitled under the
 11 law, after all just debts and expenses described in paragraph 7
 12 are fully paid, where decedent died intestate are as follows:

13	Name, relationship	Age of	Portion of
14	and place of residence	minor	Estate
15	OR		

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

24	Name, relationship	Age of	Portion of
25	and place of residence	minor	Estate

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

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

4 10.1. I,(the affiant) state that I am the
5 surviving spouse and the decedent and I resided together as
6 husband and wife and we were not legally separated, or
7 otherwise separated, at the time of decedent's death.

8 10.2. I, (the affiant) state that my
9 relationship to the decedent is and (check
10 all that apply):

11 ... there is no surviving spouse; or

12 ... there is a surviving spouse, but the surviving spouse is:

13 ... unable to prepare the small estate affidavit for
14 medical reasons as shown by the attached letter of a physician
15 for the surviving spouse, based upon the physician's
16 examination of the surviving spouse within 90 days prior to the
17 date of the affidavit, attesting to and describing this
18 disabling medical condition; or

19 ... has declined, refused, or asked affiant to prepare the
20 small estate affidavit. The reason that the affiant has
21 prepared this small estate affidavit rather than the surviving
22 spouse is that (state here the precise time, date, and
23 circumstances of the surviving spouse declining, refusing, or
24 asking affiant to prepare the small estate affidavit):

25

26 Attached is a statement of the surviving spouse in which

1 the surviving spouse expressly declines or states that he or
 2 she refuses to prepare the small estate affidavit or expressly
 3 requests that the affiant prepare the small estate affidavit.
 4 This statement must be signed by the surviving spouse,
 5 witnessed by 2 persons unrelated to the affiant, and be
 6 notarized.

7 11. The property described in paragraph 6 of this affidavit
 8 should be distributed, after all just debts and expenses
 9 described in paragraph 7 are fully paid, as follows:

10	Name	Specific sum or property to be distributed
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11 The foregoing statement is made under the penalties of
 12 perjury* .

13
 14 Signature of Affiant

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, all persons named in paragraph 11 of the small
 22 estate affidavit (excluding minors and unascertained or
 23 disabled persons) may in writing appoint one or more persons as
 24 their agent for that purpose, provided that the writing
 25 contains the signature of each person, is witnessed by 2

1 persons unrelated to the affiant and is notarized, and also
2 shows the written consent of the surviving spouse and all adult
3 children. The agent shall have power, without court approval,
4 to gain access to, sell, and distribute the property for the
5 benefit of all persons named in paragraph 11 of the affidavit;
6 and the payment, delivery, transfer, access or issuance shall
7 be made or granted to or on the order of the agent.

8 (d) Release. Upon examination and approval of all documents
9 presented by the affiant with this small estate affidavit,
10 payment, delivery, transfer, access or issuance pursuant to a
11 properly executed affidavit, the person, ~~or~~ corporation, or
12 financial institution is released to the same extent as if the
13 payment, delivery, transfer, access or issuance had been made
14 or granted to the representative of the estate. Such person, ~~or~~
15 corporation, or financial institution is not required to see to
16 the application or disposition of the property; but each person
17 to whom a payment, delivery, transfer, access or issuance is
18 made or given is answerable therefor to any person having a
19 prior right and is accountable to any representative of the
20 estate.

21 (e) The affiant signing the small estate affidavit prepared
22 pursuant to subsection (b) of this Section shall indemnify and
23 hold harmless all creditors and heirs of the decedent and other
24 persons relying upon the affidavit who incur loss because of
25 such reliance. That indemnification shall only be up to the
26 amount lost because of the act or omission of the affiant. Any

1 person recovering under this subsection (e) shall be entitled
2 to reasonable attorney's fees and the expenses of recovery.

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

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

18 (h) The changes made by this amendatory Act of the 96th
19 General Assembly apply to a decedent whose date of death is on
20 or after the effective date of this amendatory Act of the 96th
21 General Assembly.

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