



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1900/1
FFK:jld

2017 SENATE BILL 101

March 9, 2017 - Introduced by Senators FEYEN, WANGGAARD and OLSEN, cosponsored by Representatives THIESFELDT, DOYLE, KATZMA, HORLACHER and BERNIER. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT to amend** 867.03 (1g) (intro.) and 867.03 (1m) (a) and (b), (2) and (2g) (a)
2 and (b) of the statutes; **relating to:** the transfer by affidavit option for small
3 estates.

Analysis by the Legislative Reference Bureau

This bill makes the transfer by affidavit procedure for a small estate, which is an estate that does not exceed \$50,000 in value, available to a person who is named in a decedent's will as the personal representative. Under current law, the transfer by affidavit procedure may only be used by an heir of the decedent, a trustee of a revocable trust created by the decedent, or a person who was a guardian of the decedent at the time of the decedent's death. The transfer by affidavit procedure is a method to transfer a decedent's assets without court supervision.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 867.03 (1g) (intro.) of the statutes is amended to read:
5 867.03 (1g) **GENERALLY.** (intro.) When a decedent leaves property subject to
6 administration in this state which does not exceed \$50,000 in value, any heir of the
7 decedent, trustee of a revocable trust created by the decedent, a person named in the

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1 will to act as personal representative, or person who was guardian of the decedent
2 at the time of the decedent's death may collect any money due the decedent, receive
3 the property of the decedent, and have any evidence of interest, obligation to, or right
4 of the decedent transferred to the affiant if the heir, trustee, person named in the will
5 to act a personal representative, or guardian provides to the person owing the money,
6 having custody of the property, or acting as registrar or transfer agent of the
7 evidences of interest, obligation to, or right, or, if the property is an interest in or lien
8 on real property, provides to the register of deeds preliminary to the recording
9 required under sub. (2m), proof of prior mailed notice under sub. (1m) if applicable
10 and an affidavit in duplicate showing all of the following:

11 **SECTION 2.** 867.03 (1m) (a) and (b), (2) and (2g) (a) and (b) of the statutes are
12 amended to read:

13 867.03 **(1m)** (a) Whenever an heir, trustee, person named in the will to act as
14 personal representative, or person who was guardian of the decedent at the time of
15 the decedent's death intends to transfer a decedent's property by affidavit under sub.
16 (1g) and the decedent or the decedent's spouse ever received services provided as a
17 benefit under a long-term care program, as defined in s. 49.496 (1) (bk), medical
18 assistance under subch. IV of ch. 49, long-term community support services funded
19 under s. 46.27 (7), or aid under s. 49.68, 49.683, 49.685, or 49.785, the heir, trustee,
20 person named in the will to act as personal representative, or person who was
21 guardian of the decedent at the time of the decedent's death shall give notice to the
22 department of health services of his or her intent. The notice shall include the
23 information in the affidavit under sub. (1g) and the heir, trustee, person named in
24 the will to act as personal representative, or person who was guardian of the

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1 decedent at the time of the decedent's death shall give the notice by certified mail,
2 return receipt requested.

3 (b) An heir, trustee, person named in the will to act as personal representative,
4 or person who was guardian of the decedent at the time of the decedent's death who
5 files an affidavit under sub. (1g) that states that the decedent or the decedent's
6 spouse received services provided as a benefit under a long-term care program, as
7 defined in s. 49.496 (1) (bk), medical assistance under subch. IV of ch. 49, long-term
8 community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683,
9 49.685, or 49.785 shall attach to the affidavit the proof of mail delivery of the notice
10 required under par. (a) showing the delivery date.

11 (2) RELEASE OF LIABILITY OF TRANSFEROR. Upon the transfer to the heir, trustee,
12 person named in the will to act as personal representative, or person who was
13 guardian of the decedent at the time of the decedent's death furnishing the affidavit
14 with an attached proof of mail delivery if required under sub. (1m) (b), the transferor
15 is released to the same extent as if the transfer had been made to the personal
16 representative of the estate of the decedent.

17 (2g) (a) By accepting the decedent's property under this section the heir,
18 trustee, person named in the will to act as personal representative, or person who
19 was guardian of the decedent at the time of the decedent's death assumes a duty to
20 apply the property transferred for the payment of obligations according to priorities
21 established under s. 859.25 and to distribute any balance to those persons designated
22 in the appropriate governing instrument, as defined in s. 854.01, of the decedent or
23 if there is no governing instrument, according to the rules of intestate succession
24 under ch. 852, subject to par. (b). An heir, person named in the will to act as personal
25 representative, or person who was guardian of the decedent at the time of the

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1 decedent's death may publish a notice to creditors in the same manner and with the
2 same effect as a trustee under s. 701.0508. This paragraph does not prohibit any
3 appropriate person from requesting administration of the decedent's estate under s.
4 856.07 or ch. 865.

5 (b) Property transferred under this section to or by an heir, trustee, person
6 named in the will to act as personal representative, or person who was guardian of
7 the decedent at the time of the decedent's death is subject to the right of the
8 department of health services to recover under s. 46.27 (7g), 49.496, 49.682, or 49.849
9 an amount equal to the medical assistance that is recoverable under s. 49.496 (3) (a),
10 an amount equal to aid under s. 49.68, 49.683, 49.685, or 49.785 that is recoverable
11 under s. 49.682 (2) (a) or (am), or an amount equal to long-term community support
12 services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1. and that was paid
13 on behalf of the decedent or the decedent's spouse. Upon request, the heir, trustee,
14 person named in the will to act as personal representative, or person who was
15 guardian of the decedent at the time of the decedent's death shall provide to the
16 department of health services information about any of the decedent's property that
17 the heir, trustee, person named in the will to act a personal representative, or person
18 who was guardian of the decedent at the time of the decedent's death has distributed
19 and information about the persons to whom the property was distributed.

20 (END)