

State of Wisconsin



2017 Senate Bill 101

Date of enactment: **November 30, 2017**

Date of publication*: **December 1, 2017**

2017 WISCONSIN ACT 90

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

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

SECTION 1. 867.03 (1g) (intro.) of the statutes is amended to read:

867.03 (1g) **GENERALLY.** (intro.) ~~When~~ Except as provided in sub. (1h) and subject to sub. (1j), when a decedent leaves property subject to administration in this state which does not exceed \$50,000 in value, any heir of the decedent, trustee of a revocable trust created by the decedent, a person named in the will to act as personal representative, or person who was guardian of the decedent at the time of the decedent's death may collect any money due the decedent, receive the property of the decedent, and have any evidence of interest, obligation to, or right of the decedent transferred to the affiant if the heir, trustee, person named in the will to act as personal representative, or guardian provides to the person owing the money, having custody of the property, or acting as registrar or transfer agent of the evidences of interest, obligation to, or right, or, if the property is an interest in or lien on real property, provides to the register of deeds preliminary to the recording required under sub. (2m), proof of prior mailed notice under sub. (1m) if applicable and an affidavit in duplicate showing all of the following:

SECTION 1g. 867.03 (1h) of the statutes is created to read:

867.03 (1h) **EXCEPTION FOR REAL PROPERTY.** A person named in the will as personal representative may not receive any real property of the decedent by providing an affidavit under sub. (1g) or have any evidence of interest, obligation to, or right of the decedent in any real property of the decedent transferred to the person named in the will as personal representative by providing an affidavit under sub. (1g).

SECTION 1m. 867.03 (1j) of the statutes is created to read:

867.03 (1j) **TRANSFERS TO A PERSON NAMED TO ACT AS PERSONAL REPRESENTATIVE.** A person who receives an affidavit under sub. (1g) from a person named in the will to act as personal representative may not transfer any money due the decedent, the property of the decedent, or any evidence of interest, obligation to, or right of the decedent to the affiant until 30 days after the day on which the affidavit is received. If, during the 30-day period, the person who received the affidavit receives an affidavit under sub. (1g) for the same decedent from another person, the person who received the affidavits may not transfer any money due the decedent, the property of the decedent, or any evidence of interest, obligation to, or right of the decedent under this section unless ordered to do so by a court. Subsection (2) does not apply to a transfer if the transferor did not comply with this subsection.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

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

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

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

(2) RELEASE OF LIABILITY OF TRANSFEROR. ~~Upon~~ Except as provided in sub. (1j) and subject to sub. (1h), upon the transfer to the heir, trustee, person named in the will to act as personal representative, or person who was guardian of the decedent at the time of the decedent's death furnishing the affidavit with an attached proof of mail delivery if required under sub. (1m) (b), the transferor is released to the same extent as if the transfer had

been made to the personal representative of the estate of the decedent.

(2g) (a) By accepting the decedent's property under this section the heir, trustee, person named in the will to act as personal representative, or person who was guardian of the decedent at the time of the decedent's death assumes a duty to apply the property transferred for the payment of obligations according to priorities established under s. 859.25 and to distribute any balance to those persons designated in the appropriate governing instrument, as defined in s. 854.01, of the decedent or if there is no governing instrument, according to the rules of intestate succession under ch. 852, subject to par. (b). An heir, person named in the will to act as personal representative, or person who was guardian of the decedent at the time of the decedent's death may publish a notice to creditors in the same manner and with the same effect as a trustee under s. 701.0508. This paragraph does not prohibit any appropriate person from requesting administration of the decedent's estate under s. 856.07 or ch. 865.

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