



Jeremy Thiesfeldt

STATE REPRESENTATIVE • 52nd ASSEMBLY DISTRICT

Testimony on Assembly Bill 152 April 27, 2017

Mr. Chairman, members of the committee, thank you for having a hearing today to share with you this relatively simple bill to make a transfer by affidavit procedure for a small estate, which does not exceed \$50,000 in value, available to a person who is named in a decedent's will as the personal representative.

As you may know, this process is a method used to transfer assets without court supervision. Under current law the transfer may only be used by 1) an heir of the decedent, 2) a trustee of a revocable trust created by the decedent, or 3) a person who was a guardian of the decedent at the time of their death.

This bill would add a 4th category to the law by allowing the person named in the will as the personal representative to use the affidavit procedure as well.

Following the Senate hearing on the companion bill Rep. Doyle, Sen. Risser, and Sen. Taylor worked with the authors to craft an amendment to protect against additional claims via affidavit process that could arise. If within 30 days of the first affidavit being presented, an additional affidavit(s) comes to light, under the amendment, the transfer of assets could not occur without a court order.

This is an example of a citizen discovering a problem in the midst of dealing with a deceased individual's estate. Considering the small nature of the asset threshold in the affidavit process, this will save time and allow the personal representative to distribute a larger share of the small estate versus spending it on costly lawyers. My constituent, Ron Schwalbach from Fond du Lac, can elaborate on the cost and his experience on why this legislation is needed.



DAN FEYEN

STATE SENATOR

18th Senate District
(608) 266-5300
Sen.Feyen@legis.wi.gov

PO Box 7882, Madison, WI 53707-7882
<http://legis.wisconsin.gov/senate/18/feyen>

To: The Assembly Committee on Judiciary
From: Sen. Dan Feyen
Re: Assembly Bill 152

Mr. Chairman, members of the committee, thank you for holding this hearing today.

The idea for Assembly Bill 152, relating to the transfer by affidavit option for small estates, was brought to my office by a constituent who resides in Fond du Lac. You will hear his story later in today's hearing. Unfortunately, he recently lost an aunt and then faced unnecessary burdens in the court system when trying to settle her estate. My bill would help him and many other Wisconsinites access assets that are rightfully theirs without excessive lawyers' fees and wait times.

Currently, there is a provision in statute that allows for a small estate, defined as under \$50,000, to be transferred by an affidavit. Under the provision, a spouse, relative by blood/adoption, a trustee of a living trust, or the person's guardian at the time of death can complete a form, have it notarized, and present it along with a death certificate to a financial institution in order to close an account and have the contents dispensed.

However, there are many persons who are named in wills as either personal representatives or beneficiaries who are not related by blood to the deceased. These individuals may be related by marriage or have a widely varying range of other ties to the deceased. The option to complete a transfer by affidavit is not available to these persons. Therefore, they have to hire an attorney to settle the estate. This requires these individuals to spend money on lawyer's fees, wait months instead of days to settle estates, and either take out a personal loan or leave creditors without payment in the meantime.

This legislation proposes that the option to complete a transfer by affidavit also be available to the individual(s) named as a personal representative in the will. A personal representative is, "the name that is given to the executor or administrator of an estate, a trustee or a receiver." The primary duty is to protect the estate in a manner consistent with the deceased's wishes. Generally speaking, a personal representative is responsible for collecting the assets of the estate, protecting the estate property, preparing an inventory of the property, paying valid claims (including debts and taxes) against the estate, representing the estate in claims against others and distributing the estate property to the beneficiaries.

If an individual believes the person they picked for these duties is trustworthy to fulfill them, the state should not hinder their ability to use a transfer by affidavit in order to save time and money in what can already be a stressful time in their lives after losing a loved one.

Thank you for your time and consideration. I greatly appreciate it.

To: Wisconsin State Assembly—Committee on the Judiciary

From: Ron Schwalbach, Fond du Lac Resident

Subject: Assembly Bill 152

Senate Bill 101

Date: April 27, 2017

Honored Representatives:

I am in support of the above captioned bills as the restrictions imposed by Wis. Stat. 867.03 have adversely affected my brothers and me. You see our aunt (father's brother's wife) died last April at age 93, leaving no spouse, no children, and no sibs. The probate estate was less than \$6700 mostly in a checking account. She had a Will which left the probate estate to her nephews (us four brothers) with two churches to be given a \$1000 each. The Will named me as personal representative. I understand that the Transfer by Affidavit (867.03) was placed into law to allow a swift and inexpensive method to settle small estates. However, the statute allows just three entities to use this method: an heir, trustee, or guardian. "Heir" as defined by Wis. Stat. 851.09 and 852.01 is one who is a spouse or relative by blood or adoption. The use of the Transfer by Affidavit was not an option for me. This is because I am a nephew "by marriage" not "by blood". Also the statute gave me no standing as the named personal representative.

The Outagamie County probate office told me the my next option for a small estate was to use Summary Assignment (867.02) but that I would be required to hire an attorney. It is much more complex than the affidavit method and adds expense, work for the family, and elapsed time. Attorney fees alone were quoted as starting at \$1500 (almost a quarter of the estate).

It will be helpful, logical, and I believe consistent with the intent of the Transfer by Affidavit statute to add the "personal representative named in the Will" as a party who can use this method of administration. Thank you for your kind attention to this matter.

As an aside I wish to note inadvertent harm caused by the current statute to some groups involving a small estate:

*Decedents who took the time and incurred the expense of making out a Will, carefully choosing a personal representative who in fact is not a blood relative.

*Families who do not have the means to borrow money for funeral expenses and attorney fees when a Will is probated via the court despite the existence of a named personal representative.

*Decedents who were single (widowed, divorced, never married), who were also childless and did not have sibs (was an only child or outlived sibs) but have close relatives by marriage.