

1989 Senate Bill 273

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1989 WISCONSIN ACT 141

AN ACT to amend 601.53 (1), 868.03 (5), 880.08 (1) and 887.01 (1) of the statutes, **relating to:** notice about insurers doing a surety business; the agent in ancillary probate proceedings and notice of a petition for appointment or change of a guardian; and court reporters administering oaths (suggested as remedial legislation by the director of state courts).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the director of state courts and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

SECTION 2. 601.53 (1) of the statutes is amended to read:

601.53 (1) INSURERS DOING A SURETY BUSINESS. Whenever any authorized insurer doing a surety business has filed a petition for receivership, or is in the hands of a receiver under ch. 645 or otherwise or the commissioner has reason to believe the company is in financial difficulty or has unreasonably failed to carry out any of its contracts, the commissioner shall immediately notify every circuit judge and the clerks of all courts of record in the register in probate, probate registrar and clerk of circuit court of this state. Upon the receipt of the notice it is the duty of ~~circuit judges and clerks of courts of record~~ each register in probate, probate registrar and clerk of circuit court to notify and require every fiduciary that has filed a bond on which the company is surety, forthwith to file a new bond with a new surety.

NOTE: Rather than the present designation of circuit judges and clerks of court of record, this subsection designates more appropriate court personnel — registers in probate, probate registrars and clerks of circuit court — as the persons

responsible for: 1) notifying each fiduciary that filed a bond with the court when an insurer doing surety business is in liquidation or receivership; and 2) requiring affected fiduciaries to file a new bond issued by a new surety.

SECTION 3. 868.03 (5) of the statutes is amended to read:

868.03 (5) AGENT TO ACCEPT SERVICE OF PROCESS. No nonresident shall be granted ancillary letters and no person shall be granted leave to remove assets under sub. (7), until ~~he~~ the person files in the court an ~~irrevocable power of attorney constituting the clerk of the court~~ authorization appointing the register in probate as his or her agent to accept and be subject to service of process or of notice in any action or proceeding relating to the administration of the estate. The ~~clerk~~ register in probate shall forthwith forward to the representative at his or her last-known address any process or notice so received, by registered mail requesting a return receipt signed by addressee only. Forwarding by ordinary mail is sufficient if when tendered at a U.S. post office an envelope containing such notice addressed to such representative is refused registration.

NOTE: Consistent with the duties of the office and court practice, this subsection provides that the register in probate, rather than the clerk of court, is the agent to be appointed by the personal representative of a nonresident decedent to receive service of process or of notice in ancillary probate proceedings. Ancillary probate proceedings administer assets located in this state when the owner dies as a resident outside the state.

SECTION 4. 880.08 (1) of the statutes is amended to read:

880.08 (1) INCOMPETENTS. A petitioner shall have notice served of a petition for appointment or change of a guardian upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing. If such proposed incompetent is in custody or confinement, a petitioner shall have notice served by registered or certified mail on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that the custodian served and informed the proposed incompetent and returned the certificate and notice to the circuit judge. The notice shall include the names of all persons who are petitioning for guardianship ~~and specific allegations of the grounds of incompetency.~~ A copy of the petition shall be attached to the notice. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies in writing to the court the specific reasons why the person is unable to attend. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, adversary counsel or other interested person. Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompetent's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence

be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court may require. The court shall then proceed under s. 880.33.

NOTE: This subsection provides that a copy of the petition for the appointment or change of a guardian shall be attached to the notice of the filing of the petition, rather than the notice itself having to repeat the allegations that are in the petition.

SECTION 5. 887.01 (1) of the statutes is amended to read:

887.01 (1) WITHIN THE STATE. An oath or affidavit required or authorized by law, except oaths to jurors and witnesses on a trial and such other oaths as are required by law to be taken before particular officers, may be taken before any judge, court commissioner, resident U.S. commissioner who has complied with s. 706.07, clerk, deputy clerk or calendar clerk of a court of record, court reporter, notary public, town clerk, village clerk, city clerk, municipal judge, county clerk or the clerk's deputy within the territory in which the officer is authorized to act, school district clerk with respect to any oath required by the elections laws; and, when certified by the officer to have been taken before him or her, may be read and used in any court and before any officer, board or commission. Oaths may be administered by any person mentioned in s. 885.01 (3) and (4) to any witness examined before him or her.

NOTE: This subsection adds court reporters to the list of officers authorized to administer any oath required or authorized by law other than those required by statute to be administered by a particular officer. Inclusion of court reporters will alleviate oath administration problems, especially in border areas, where nonresident court reporters presently cannot administer oaths in their capacity as a notary because notary status in this state requires residency.