



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-1900/1  
CMH:klm

## 2017 SENATE BILL 101

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

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*Analysis by the Legislative Reference Bureau*

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*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~~ Except as provided in sub. (1h) and  
6             subject to sub. (1j), when a decedent leaves property subject to administration in this  
7             state which does not exceed \$50,000 in value, any heir of the decedent, trustee of a  
8             revocable trust created by the decedent, a person named in the will to act as personal  
9             representative, or person who was guardian of the decedent at the time of the  
10            decedent's death may collect any money due the decedent, receive the property of the

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

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

10 867.03 (1h) EXCEPTION FOR REAL PROPERTY. A person named in the will as  
11 personal representative may not receive any real property of the decedent by  
12 providing an affidavit under sub. (1g) or have any evidence of interest, obligation to,  
13 or right of the decedent in any real property of the decedent transferred to the person  
14 named in the will as personal representative by providing an affidavit under sub.  
15 (1g).

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

17 867.03 (1j) TRANSFERS TO A PERSON NAMED TO ACT AS PERSONAL REPRESENTATIVE.  
18 A person who receives an affidavit under sub. (1g) from a person named in the will  
19 to act as personal representative may not transfer any money due the decedent, the  
20 property of the decedent, or any evidence of interest, obligation to, or right of the  
21 decedent to the affiant until 30 days after the day on which the affidavit is received.  
22 If, during the 30-day period, the person who received the affidavit receives an  
23 affidavit under sub. (1g) for the same decedent from another person, the person who  
24 received the affidavits may not transfer any money due the decedent, the property  
25 of the decedent, or any evidence of interest, obligation to, or right of the decedent

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1 under this section unless ordered to do so by a court. Subsection (2) does not apply  
2 to a transfer if the transferor did not comply with this subsection.

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

5 867.03 (1m) (a) Whenever an heir, trustee, person named in the will to act as  
6 personal representative, or person who was guardian of the decedent at the time of  
7 the decedent's death intends to transfer a decedent's property by affidavit under sub.  
8 (1g) and the decedent or the decedent's spouse ever received services provided as a  
9 benefit under a long-term care program, as defined in s. 49.496 (1) (bk), medical  
10 assistance under subch. IV of ch. 49, long-term community support services funded  
11 under s. 46.27 (7), or aid under s. 49.68, 49.683, 49.685, or 49.785, 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 shall give notice to the  
14 department of health services of his or her intent. The notice shall include the  
15 information in the affidavit under sub. (1g) and the heir, trustee, person named in  
16 the will to act as personal representative, or person who was guardian of the  
17 decedent at the time of the decedent's death shall give the notice by certified mail,  
18 return receipt requested.

19 (b) An heir, trustee, person named in the will to act as personal representative,  
20 or person who was guardian of the decedent at the time of the decedent's death who  
21 files an affidavit under sub. (1g) that states that the decedent or the decedent's  
22 spouse received services provided as a benefit under a long-term care program, as  
23 defined in s. 49.496 (1) (bk), medical assistance under subch. IV of ch. 49, long-term  
24 community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683,

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1 49.685, or 49.785 shall attach to the affidavit the proof of mail delivery of the notice  
2 required under par. (a) showing the delivery date.

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

10 (2g) (a) By accepting the decedent's property under this section the heir,  
11 trustee, person named in the will to act as personal representative, or person who  
12 was guardian of the decedent at the time of the decedent's death assumes a duty to  
13 apply the property transferred for the payment of obligations according to priorities  
14 established under s. 859.25 and to distribute any balance to those persons designated  
15 in the appropriate governing instrument, as defined in s. 854.01, of the decedent or  
16 if there is no governing instrument, according to the rules of intestate succession  
17 under ch. 852, subject to par. (b). An heir, person named in the will to act as personal  
18 representative, or person who was guardian of the decedent at the time of the  
19 decedent's death may publish a notice to creditors in the same manner and with the  
20 same effect as a trustee under s. 701.0508. This paragraph does not prohibit any  
21 appropriate person from requesting administration of the decedent's estate under s.  
22 856.07 or ch. 865.

23 (b) Property transferred under this section to or by an heir, trustee, person  
24 named in the will to act as personal representative, or person who was guardian of  
25 the decedent at the time of the decedent's death is subject to the right of the

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

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(END)