

2017 Senate Bill 101 (LRB -1900)

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

2017

03-09.	S.	Introduced by Senators Feyen, Wanggaard and Olsen ; cosponsored by Representatives Thiesfeldt, Doyle, Katsma, Horlacher and Bernier .	127
03-09.	S.	Read first time and referred to Committee on Judiciary and Public Safety	127
03-09.	S.	Representative Tusler added as a cosponsor	129
03-22.	S.	Public hearing held	
05-08.	S.	Senate Amendment 1 offered by Senator Feyen (LRB a0264)	248
05-09.	S.	Executive action taken	
05-10.	S.	Report introduction of Senate Amendment 2 by Committee on Judiciary and Public Safety, Ayes 5, Noes 0 (LRB a0531)	252
05-10.	S.	Report adoption of Senate Amendment 1 recommended by Committee on Judiciary and Public Safety, Ayes 5, Noes 0	252
05-10.	S.	Report adoption of Senate Amendment 2 recommended by Committee on Judiciary and Public Safety, Ayes 5, Noes 0	252
05-10.	S.	Report passage as amended recommended by Committee on Judiciary and Public Safety, Ayes 5, Noes 0	252
05-10.	S.	Available for scheduling	
06-09.	S.	Placed on calendar 6-14-2017 pursuant to Senate Rule 18(1)	306
06-14.	S.	Read a second time	315
06-14.	S.	Senate Amendment 1 adopted	315
06-14.	S.	Senate Amendment 2 adopted	315
06-14.	S.	Ordered to a third reading	315
06-14.	S.	Rules suspended	315
06-14.	S.	Read a third time and passed	315
06-14.	S.	Ordered immediately messaged	316
06-14.	A.	Received from Senate	283
06-20.	A.	Read first time and referred to committee on Rules	307
11-07.	A.	Placed on calendar 11-9-2017 by Committee on Rules	
11-09.	A.	Read a second time	
11-09.	A.	Ordered to a third reading	
11-09.	A.	Rules suspended	
11-09.	A.	Read a third time and concurrred in	
11-09.	A.	Ordered immediately messaged	
11-10.	S.	Received from Assembly concurred in	

MB



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2017 ENROLLED BILL

Adopted Documents

Original

Engrossed

Substitute Amdt

17 - 1900 / 1

Amendments: None or Listed below.

SA 1

SA 2

Corrections: None or Listed by date below.

ccc to SA 1 - 11/8/17

ccc to SA 2 - 11/12/17

Topic: Same as relating clause or other, indicated below.

11/13/17

Cosil

Date

Enrolling Drafter



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

SP 1
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Except as provided in sub. (1h) and subject to sub. (1j), when

SENATE BILL 101

SECTION 1

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:

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

INS
 SA 2
 #2

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

SENATE BILL 101

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. Except as provided in sub. (1j) and
and subject to sub. (1k), upon

SA 1
#3
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.

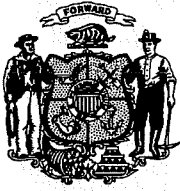
17 (2g) (a) By accepting the decedent's property under this section the heir,
18 trustee, person named in the will to act as personal representative, or person who
19 was guardian of the decedent at the time of the decedent's death assumes a duty to
20 apply the property transferred for the payment of 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

SENATE BILL 101**SECTION 2**

1 decendent'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)



State of Wisconsin
2017-2018 LEGISLATURE

CORRECTIONS IN:

**SENATE AMENDMENT 1,
TO SENATE BILL 101**

Prepared by the Legislative Reference Bureau
(November 21, 2017)

In enrolling, the following corrections were made:

1. Page 1, line 3: after "sub." insert "(1h) and subject to sub.".

****NOTE: Both Senate Amendment 1 and Senate Amendment 2 created s. 867.03 (1j). The sub. (1j) created in Senate Amendment 1 is being renumbered to (1h). This item also combines item 1 in Senate Amendment 1 with item 1 in Senate Amendment 2 to reconcile the treatments.

2. Page 1, line 5: delete "**1m**" and substitute "**1g**".

3. Page 1, line 5: delete "(1j)" and substitute "(1h)".

4. Page 1, line 6: delete "(1j)" and substitute "**(1h)**".

5. Page 2, line 1: delete "Subject to sub. (1j)," and substitute "Except as provided in sub. (1j) and subject to sub. (1h),".

****NOTE: This item combines item 3 in Senate Amendment 1 with item 3 in Senate Amendment 2 to reconcile the treatments.

(END)



**SENATE AMENDMENT 1,
TO SENATE BILL 101**

May 8, 2017 - Offered by Senator FEYEN.

(Kh) and subject to sub.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 5: delete "When" and substitute "When Except as provided in
3 sub. (1j), when".

4 **2.** Page 2, line 10: after that line insert:

5 "SECTION 1^gm. 867.03 (1)^hj of the statutes is created to read:

6 ^{cc #1} 867.03 (1)^h EXCEPTION FOR REAL PROPERTY. A person named in the will as
7 personal representative may not receive any real property of the decedent by
8 providing an affidavit under sub. (1g) or have any evidence of interest, obligation to,
9 or right of the decedent in any real property of the decedent transferred to the person
10 named in the will as personal representative by providing an affidavit under sub.
11 (1g)".

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3. Page 3, line 11: delete "Upon" and substitute "~~Upon~~ Subject to sub. (1)^h,
upon".

(END)

ccc
#5

Except as provided
in sub. (1j) and



State of Wisconsin
2017-2018 LEGISLATURE

CORRECTIONS IN:

**SENATE AMENDMENT 2,
TO SENATE BILL 101**

Prepared by the Legislative Reference Bureau
(November 21, 2017)

In enrolling, the following corrections were made:

1. Page 1, line 2: delete lines 2 and 3.
2. Page 2, line 4: delete lines 4 and 5.

****NOTE: Senate Amendment 1 and Senate Amendment 2 treated the same provisions. Items 1 and 3 of Senate Amendment 2 have been moved to items 1 and 3 of Senate Amendment 1 to reconcile the treatments.

(END)

LRBa0531/lccc-1

KLM

Minor clerical corrections in legislation are authorized under s. 35.17, stats.; Senate Rule 31; Assembly Rule 36; and Joint Rule 56.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBa0531/1
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SENATE AMENDMENT 2,
TO SENATE BILL 101

May 10, 2017 - Offered by COMMITTEE ON JUDICIARY AND PUBLIC SAFETY.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 5: delete “When” and substitute “When Subject to sub. (1j),
3 when”.

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4 **2.** Page 2, line 10: after that line insert:

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

6 **867.03 (1j) TRANSFERS TO A PERSON NAMED TO ACT AS PERSONAL REPRESENTATIVE.**

7 A person who receives an affidavit under sub. (1g) from a person named in the will
8 to act as personal representative may not transfer any money due the decedent, the
9 property of the decedent, or any evidence of interest, obligation to, or right of the
10 decedent to the affiant until 30 days after the day on which the affidavit is received.
11 If, during the 30-day period, the person who received the affidavit receives an
12 affidavit under sub. (1g) for the same decedent from another person, the person who
13 received the affidavits may not transfer any money due the decedent, the property

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1 of the decedent, or any evidence of interest, obligation to, or right of the decedent
2 under this section unless ordered to do so by a court. Subsection (2) does not apply
3 to a transfer if the transferor did not comply with this subsection”.

INS
SA 2
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cont.

4 **3.** Page 3, line 11: delete “Upon” and substitute “Upon Except as provided in
5 sub. (1j), upon”.

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#2

6 (END)