

2017 DRAFTING REQUEST

Bill

For: **Dan Feyen (608) 266-5300** Drafter: **fknepp**
 By: **Marie Jolly** Secondary Drafters:
 Date: **1/30/2017** May Contact:
 Same as LRB: **-2220**

Submit via email: **YES**
 Requester's email: **Sen.Feyen@legis.wi.gov**
 Carbon copy (CC) to: **fern.knepp@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Transfer by Affidavit

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	fknepp 1/31/2017				
/P1	fknepp 2/6/2017	jdyer 2/2/2017	mbarman 2/2/2017		
/P2	fknepp 2/21/2017	jdyer 2/8/2017	mbarman 2/8/2017		
/1		jdyer 2/22/2017	mbarman 2/22/2017	hkohn 2/22/2017	

FE Sent For:

<END>

↳ Not Needed

Knepp, Fern

From: Johns, Melinda
Sent: Monday, January 30, 2017 10:25 AM
To: Knepp, Fern
Subject: FW: Drafting Request

Hi Fern,

I think this falls in your drafting area, correct? I haven't responded to the requester yet – I wanted to figure out who the correct drafting attorney was first.

Thanks,

Melinda

Melinda L. Johns
Legislative Attorney
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 261-4454

From: Jolly, Marie
Sent: Monday, January 30, 2017 10:20 AM
To: Johns, Melinda <Melinda.Johns@legis.wisconsin.gov>
Subject: Drafting Request

Hello,

I am interested in drafting a bill that would allow personal representatives designated in a will to utilize probate law and complete a transfer by affidavit of an estate.

Below is some background information on what we're trying to remedy:

From a constituent-

"My aunt recently died, nominating me as her personal representative. Her probate estate is less than \$7,000, mostly in a checking account. There is a provision in statute for small estates (under \$50,000) called Transfer by Affidavit, 867.03 (1)(g), which allows one to simply complete a form, have it notarized, and present it along with a death certificate to a financial institution to close an account and have the proceeds dispensed. The probate court is involved only to file the Will. There is no hearing, no cost, no attorney needed, and no official appointment of a personal representative. However, this procedure cannot be used by relatives by marriage, as they are not "heirs" as defined by 851.09, which refers to those in line to inherit under intestate succession 852.01 (spouse and relatives by blood or adoption). My aunt had married my father's brother in 1944, thus we are related by "marriage", not by "blood", and I and my brothers would not inherit if not named as beneficiaries by Will. Her remaining blood relatives are elderly first cousins who are not beneficiaries in the Will and have no interest in doing a Transfer by Affidavit as a "blood relative", which then requires that they dispense assets according to the Will, basically assuming the duties of a personal representative. Involving them also was not my aunt's desire.

I spoke with two attorneys who have advised me that I cannot use a Transfer by Affidavit for the above reasons. The probate court advised me that I must hire an attorney to settle the estate (Outagamie County where my aunt resided but the same for Fond du Lac County). In the end it will cost the estate \$1500 in attorney fees and expenses, take months (it has already been two) instead of days to access the checking account of \$6600, require a personal loan to pay estate expenses in the meantime (optional but I do not wish to keep creditors hanging including the funeral home), and will have a net probate estate of less than \$1000 after all bills are paid and churches receive monies by Will. Does this process make sense?

I suggest that the statute be amended to allow relatives by marriage who are beneficiaries by Will and/or anyone nominated by Will as the personal representative to be allowed to use a Transfer by Affidavit"

From Leg Council-

On the suggested amendment, it may be possible to add "any person named in the will to act as personal representative" as an additional person who is authorized to make transfers by affidavit. [Compare s. 856.07 (1), Stats.]

Please let me know if you have any questions/see any issues.

Thanks,

Marie Jolly
Senator Dan Feyen
18th Senate District
(608) 266-5300



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1900 P/P1
FFK: A
JLD

± 11-31
out 2-2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

4

Gen

1 AN ACT ...; relating to: transfer by affidavit option for small estates. ✓

Analysis by the Legislative Reference Bureau

This bill makes the transfer by affidavit procedure for a small estate, 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. ✓

which is

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

2 SECTION 1. 867.03 (1g) (intro.) of the statutes is amended to read:
3 867.03 (1g) GENERALLY. (intro.) When a decedent leaves property subject to
4 administration in this state which does not exceed \$50,000 in value, any heir of the
5 decedent, a person named in the will to act as personal representative, trustee of a
6 revocable trust created by the decedent, or person who was guardian of the decedent
7 at the time of the decedent's death may collect any money due the decedent, receive

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

History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 16, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a); 2013 a. 20, 92; 2015 a. 55.

9

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

10

867.03 (1m) NOTICE OF AFFIDAVIT (a) Whenever an heir, trustee, person named

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in the will to act a personal representative, or person who was guardian of the

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decedent at the time of the decedent's death intends to transfer a decedent's property

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by affidavit under sub. (1g) and the decedent or the decedent's spouse ever received

14

services provided as a benefit under a long-term care program, as defined in s. 49.496

15

(1) (bk), medical assistance under subch. IV of ch. 49, long-term community support

16

services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, 49.685, or 49.785,

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 shall give notice

19

to the department of health services of his or her intent. The notice shall include the

20

information in the affidavit under sub. (1g) and the heir, trustee, person named in

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the will to act a personal representative, or person who was guardian of the decedent

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at the time of the decedent's death shall give the notice by certified mail, return

23

receipt requested.

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

History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 16, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a); 2013 a. 20, 92; 2015 a. 55.

9 (2) RELEASE OF LIABILITY OF TRANSFEROR. Upon the transfer to the heir, trustee,
10 person named in the will to act a^S personal representative, or person who was
11 guardian of the decedent at the time of the decedent's death furnishing the affidavit
12 with an attached proof of mail delivery if required under sub. (1m) (b), the transferor
13 is released to the same extent as if the transfer had been made to the personal
14 representative of the estate of the decedent.

History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 16, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a); 2013 a. 20, 92; 2015 a. 55.

15 (2g) (OBLIGATION OF AFFIANT) (a) By accepting the decedent's property under this
16 section the heir, trustee, person named in the will to act a^S personal representative,
17 or person who was guardian of the decedent at the time of the decedent's death
18 assumes a duty to apply the property transferred for the payment of obligations
19 according to priorities established under s. 859.25 and to distribute any balance to
20 those persons designated in the appropriate governing instrument, as defined in s.
21 854.01, of the decedent or if there is no governing instrument, according to the rules
22 of intestate succession under ch. 852, subject to par. (b). An heir, person named in
23 the will to act a^S personal representative, or person who was guardian of the decedent

1 at the time of the decedent's death may publish a notice to creditors in the same
 2 manner and with the same effect as a trustee under s. 701.0508. This paragraph does
 3 not prohibit any appropriate person from requesting administration of the
 4 decedent's estate under s. 856.07 or ch. 865.

****NOTE: As amended, this provision allows a person named as a personal representative to publish notice in the same manner and with the same effect as a trustee under the trust code. This makes the notice provision the same for all transfers of ^{property} by affidavit regardless of who initiates the process. Okay? Another option is to have a person named as a personal representative subject to the notice/publication provision that is generally applicable to personal representatives.

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

History: 1973 c. 43; 1975 c. 380 s. 5; 1979 c. 29; 1989 a. 234; 1993 a. 16, 205, 437; 1995 a. 27 ss. 7197b to 7199c, 9126 (19); 1997 a. 27; 1999 a. 9, 94; 2005 a. 216, 387; 2007 a. 20 s. 9121 (6) (a); 2013 a. 20, 92; 2015 a. 55.

Knepp, Fern

From: Jolly, Marie
Sent: Monday, February 06, 2017 11:23 AM
To: Knepp, Fern
Subject: RE: Draft review: LRB -1900/P1

A P2 and the note removed would be perfect, thanks!

Marie

From: Knepp, Fern
Sent: Monday, February 06, 2017 11:15 AM
To: Jolly, Marie <Marie.Jolly@legis.wisconsin.gov>
Subject: RE: Draft review: LRB -1900/P1

Marie:

The order does not have a legal impact. However, I will change the list on Page 1 to be parallel to the other lists for readability. The list on page 3, lines 24 and 25 does not include trustee because it allows the other actors to do something in the same manner as a trustee.

Would you like a /P2 with this change and the note removed?

Fern

From: Jolly, Marie
Sent: Monday, February 06, 2017 11:07 AM
To: Knepp, Fern <Fern.Knepp@legis.wisconsin.gov>
Subject: RE: Draft review: LRB -1900/P1

Hello,

Thanks for the draft!

As far as the note on page 4 under line 4—I would say yes, as you have it drafted now, which allows the personal representative to publish notice as a trustee would, is how I would like the draft to read. This allows means the draft would be consistent with other groups that are authorized to use a transfer by affidavit, which is ideal, if I'm understanding it correctly.

One other concern -- Most of the draft lists heir, trustee, personal rep named in the will, and guardian in that order. However, a slightly different order is used on page 1, par. 6 and 7 and moving to the first two par. of page 2. This also applies to page 3, par. 24 and 25. I just wanted to ensure that these being listed in a different order has no real effect on the legislative intent.

Thanks for your time,

Marie Jolly
Senator Dan Feyen
18th Senate District

(608) 266-5300

From: LRB.Legal

Sent: Thursday, February 02, 2017 8:54 AM

To: Sen.Feyen <Sen.Feyen@legis.wisconsin.gov>

Subject: Draft review: LRB -1900/P1

Following is the PDF version of draft LRB -1900/P1.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-1900/P1/P2
FFK:jld/pmk

In 2-4
out 2-8

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

x Regen

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: 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:

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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, a person named in the will to act as personal representative, trustee of a

↑
INSERT A
more to pg. 2

insert A move
from pg 1 ✓

1 revocable trust created by the decedent, 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:

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

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

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
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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

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.

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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

LRB-1900/P2 /1
FFK:jld
RMK

In 2-21
out 2-22

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

lx
Regen

1 AN ACT *to amend* 867.03 (1g) (intro.) and 867.03 (1m) (a) and (b), (2) and (2g) (a)
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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:

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17 benefit under a long-term care program, as defined in s. 49.496 (1) (bk), medical
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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

1 decedent at the time of the decedent's death shall give the notice by certified mail,
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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
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16 representative of the estate of the decedent.

17 (2g) (a) By accepting the decedent's property under this section the heir,
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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

1 decedent'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.

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6 named in the will to act as personal representative, or person who was guardian of
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10 an amount equal to aid under s. 49.68, 49.683, 49.685, or 49.785 that is recoverable
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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)

Kohn, Hanna

From: Jolly, Marie
Sent: Wednesday, February 22, 2017 9:23 AM
To: LRB.Legal
Subject: Draft Review: LRB -1900/1

Please Jacket LRB -1900/1 for the SENATE.