

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

382M0530

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 91** - 02/01/2006

Introduced by: Senators Bogue, Knudson, and Schoenbeck and Representatives Deadrick and Gillespie

1 FOR AN ACT ENTITLED, An Act to remove the requirement of providing social security
2 numbers in certain probate matters.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 29A-3-301 be amended to read as follows:

5 29A-3-301. (a) An informal probate proceeding is an informal proceeding for probate of a
6 decedent's will with or without an application for informal appointment. An informal
7 appointment proceeding is an informal proceeding for appointment of a personal representative
8 in testate or intestate estates. Applications for informal probate or informal appointment shall
9 be directed to the clerk of court, and verified by the applicant to be accurate and complete to the
10 best of the applicant's knowledge and belief as to the following information:

11 (1) Every application for informal probate of a will or for informal appointment of a
12 personal representative, other than a special administrator or successor representative,
13 shall contain the following:

14 (i) A statement of the interest of the applicant;

15 (ii) The name, ~~social security number~~, birthdate and date of death of the decedent,



1 the county and state of the decedent's domicile at the time of death, and, so far
2 as known or ascertainable with reasonable diligence by the applicant, the
3 names and addresses of the heirs and devisees and the ages of any who are
4 minors;

5 (iii) If the decedent was not domiciled in the state at the time of death, a statement
6 showing venue;

7 (iv) A statement identifying and indicating the address of any personal
8 representative of the decedent appointed in this state or elsewhere whose
9 appointment has not been terminated;

10 (v) A statement indicating whether the applicant has received a demand for notice,
11 or is aware of any demand for notice of any probate or appointment
12 proceeding concerning the decedent that may have been filed in this state or
13 elsewhere; and

14 (vi) A statement that the time limit for informal probate or appointment as
15 provided in this chapter has not expired either because three years or less have
16 passed since the decedent's death, or, if more than three years from death have
17 passed, circumstances as described by § 29A-3-108 authorizing late probate
18 or appointment have occurred;

19 (2) An application for informal probate of a will shall state the following in addition to
20 the statements required by subdivision (1):

21 (i) That the original of the decedent's will is in the possession of the court, or
22 accompanies the application, or that a certified copy of a will probated in
23 another jurisdiction accompanies the application;

24 (ii) That the applicant, to the best of the applicant's knowledge, believes the will

- 1 to have been validly executed;
- 2 (iii) That the applicant believes that the instrument which is the subject of the
- 3 application is the decedent's will, and that after the exercise of reasonable
- 4 diligence, the applicant is unaware of any instrument revoking the will or of
- 5 any other unrevoked testamentary instrument relating to property having a
- 6 situs in this state under § 29A-1-301, or, a statement why any such unrevoked
- 7 testamentary instrument of which the applicant may be aware is not being
- 8 probated;
- 9 (3) An application for informal appointment of a personal representative to administer
- 10 an estate under a will shall describe the will by date of execution and state the time
- 11 and place of probate or the pending application or petition for probate. The
- 12 application for appointment shall adopt the statements in the application or petition
- 13 for probate and state the name, address, and priority for appointment of the person
- 14 whose appointment is sought;
- 15 (4) An application for informal appointment of a personal representative in intestacy
- 16 shall state in addition to the statements required by subdivision (1):
- 17 (i) That after the exercise of reasonable diligence, the applicant is unaware of any
- 18 unrevoked testamentary instrument relating to property having a situs in this
- 19 state under § 29A-1-301, or, a statement why any such instrument of which the
- 20 applicant may be aware is not being probated;
- 21 (ii) The name, address, and priority for appointment of the person whose
- 22 appointment is sought and the names of any other persons having a prior or
- 23 equal right to the appointment under § 29A-3-203;
- 24 (5) An application for appointment of a personal representative to succeed a personal

1 representative appointed under a different testacy status shall refer to the order in the
2 most recent testacy proceeding, state the name and address of the person whose
3 appointment is sought and of the person whose appointment will be terminated if the
4 application is granted, and describe the priority of the applicant;

5 (6) An application for appointment of a personal representative to succeed a personal
6 representative who has tendered a resignation as provided in § 29A-3-610(c), or
7 whose appointment has been terminated by death or removal, shall adopt the
8 statements in the application or petition which led to the appointment of the person
9 being succeeded except as specifically changed or corrected, state the name and
10 address of the person who seeks appointment as successor, and describe the priority
11 of the applicant.

12 (b) By verifying an application for informal probate, or informal appointment, the applicant
13 submits personally to the jurisdiction of the court in any proceeding for relief from fraud relating
14 to the application, or for perjury, that may be instituted against the applicant.

15 Section 2. That § 29A-3-705 be amended to read as follows:

16 29A-3-705. (a) Not later than fourteen days after appointment, every personal representative,
17 except any special administrator, shall give information of the appointment to the heirs and
18 devisees, including, if there has been no formal testacy proceeding and if the personal
19 representative was appointed on the assumption that the decedent died intestate, the devisees
20 in any unprobated will mentioned in the application for appointment of a personal
21 representative.

22 (b) The information shall be delivered or sent by ordinary mail to each of the heirs and
23 devisees whose address is reasonably available to the personal representative. The duty does not
24 extend to require information to persons who have been adjudicated in a prior formal testacy

1 proceeding to have no interest in the estate. The information shall include the name and address
2 of the personal representative, indicate that it is being sent to persons who have or may have
3 some interest in the estate being administered, indicate whether bond has been filed, describe
4 the court where papers relating to the estate are on file, and shall be accompanied by a copy of
5 the will admitted to probate, if any. The information shall state that the estate is being
6 administered by the personal representative under the South Dakota Probate Code without
7 supervision by the court but that recipients are entitled to information regarding the
8 administration from the personal representative, to file a demand for notice under § 29A-3-204,
9 and to petition the court in any matter relating to the estate, including distribution of assets and
10 expenses of administration.

11 (c) Not later than fourteen days after appointment, every personal representative, other than
12 a special administrator, shall also give written information of the appointment to the State
13 Department of Social Services in Pierre, South Dakota, except that such information need not
14 include a copy of the will. The information shall include the decedent's social security number
15 and, if available upon reasonable investigation, the decedent's deceased spouse's name and
16 social security number. The written information required in this section may not be filed with
17 the court and the social security numbers of the decedent and the decedent's deceased spouse
18 are not available to the public, but the personal representative shall certify to the court that the
19 information required in this section has been provided to the department.

20 (d) The personal representative's failure to give the information is a breach of duty to the
21 persons concerned but does not affect the validity of the appointment, the personal
22 representative's powers or other duties. A personal representative may inform other persons of
23 the appointment.

24 Section 3. That § 29A-5-206 be amended to read as follows:

1 29A-5-206. Prior to the hearing on the petition, the petitioner shall file a statement of the
2 financial resources of the minor which shall, to the extent known, list ~~the minor's social security~~
3 ~~number~~, the approximate value of the real and personal estate; and the anticipated annual gross
4 income and other receipts.

5 Section 4. That § 29A-5-307 be amended to read as follows:

6 29A-5-307. Prior to the hearing on the petition, the petitioner shall file a statement of the
7 financial resources of the person alleged to need protection which shall, to the extent known,
8 list ~~the person's social security number~~, the approximate value of the real and personal estate;
9 and the anticipated annual gross income and other receipts.