

## HB164 ENROLLED



1 HB164  
2 J5XKYYF-2  
3 By Representative Faulkner  
4 RFD: Judiciary  
5 First Read: 04-Feb-25



## HB164 Enrolled

Enrolled, An Act,

Relating to the Alabama Small Estates Act; to amend Sections 43-2-690, 43-2-691, 43-2-692, 43-2-693, 43-2-694, 43-2-695, 43-2-696, 43-8-40, and 43-8-252, Code of Alabama 1975; to further provide for the summary distribution of the sum of a decedent's estate which contains personal property valued at a certain maximum amount with authorized adjustments allowed based on the Consumer Price Index, which includes the homestead allowance, exempt property, and family allowance as adjusted; and to add Sections 43-2-691.1, 43-2-697, 43-2-698, and 43-8-23 to the Code of Alabama 1975, to specify that the probate court has jurisdiction to manage these small estates under a modified and streamlined small estate distribution process.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 43-2-690, 43-2-691, 43-2-692, 43-2-693, 43-2-694, 43-2-695, 43-2-696, 43-8-40, and 43-8-252, Code of Alabama 1975, are amended to read as follows:

"§43-2-690

This division shall be known as the "Revised Alabama Small Estates Act."

"§43-2-691

For the purposes of this division, the following words and phrases ~~shall~~ have the following meanings ~~respectively ascribed to them by this section~~:

~~(1) DEVISEES. The persons who are entitled to the personal property of a decedent under the terms of a~~



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29 ~~testamentary disposition.~~

30 (1) DECEDENT. A deceased person who is not survived by  
31 a minor child who is not the child of the surviving spouse, if  
32 any, and whose estate is subject to summary distribution under  
33 this division.

34 ~~(2) DISTRIBUTEES. The persons who are entitled to the~~  
35 ~~personal property of a decedent under the terms of a~~  
36 ~~testamentary disposition or under the Alabama descent and~~  
37 ~~distribution statutes.~~

38 ~~(3)~~ (2) ESTATE. All the personal property of a decedent  
39 who owns no real property at the time of his or her death for  
40 which title does not pass by operation of law.

41 ~~(4) HEIRS. The persons who are entitled to the personal~~  
42 ~~property of a decedent under the Alabama descent and~~  
43 ~~distribution statutes.~~

44 ~~(5)~~ (3) PERSON. The term includes natural persons and  
45 corporations. A natural person, corporation, organization,  
46 other legal entity, or any trust or trustee.

47 ~~(6)~~ (4) PERSONAL REPRESENTATIVE. The term includes an  
48 executor, administrator, administrator with the will annexed,  
49 and special administrator, and successor personal  
50 representative.

51 (5) SELF-PROVED WILL. A will that is self-proved in  
52 accordance with either Section 43-8-132 or 43-8-133.

53 (6) SMALL ESTATE. An estate having a value that does  
54 not exceed the small estate amount.

55 (7) SMALL ESTATE AMOUNT. The sum as adjusted from time  
56 to time based on the Consumer Price Index formula set forth in



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Section 43-8-116 of the homestead allowance under Section 43-8-110, exempt property under Section 43-8-111, and the family allowance under Sections 43-8-112 and 43-8-113.

(8) SUMMARY DISTRIBUTION. The procedure provided in this division to distribute the small estate of a decedent without the appointment of a personal representative.

(9) SURVIVING SPOUSE. The spouse of the decedent at the time of decedent's death, provided the spouse is a surviving spouse under Section 43-8-252 and is not an individual claiming to be a spouse under common law, whether or not such common law marriage allegedly occurred before or after January 1, 2017."

"§43-2-692

~~(a) The surviving spouse, if there is one, otherwise the distributees of an estate of personal property only, may initiate a proceeding for summary distribution of the estate by filing a verified petition in the office of the judge of probate of the county in which the decedent was domiciled at death alleging the conditions provided in subsection (b). The petition shall include a description of the estate of the decedent. No bond shall be required to be filed with the petition.~~

(a) A person, or a person duly authorized to act for the person, entitled to an interest in a small estate under this division may initiate a proceeding for summary distribution of the estate by filing a verified petition in the office of the judge of probate of the county in which the decedent was domiciled at death. No bond shall be required to



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85 be filed with the petition. If the decedent died with a  
86 self-proved will, the self-proved will shall be filed with the  
87 petition.

88 ~~(b) The surviving spouse or distributee shall have a~~  
89 ~~defeasible right to the personal property of the decedent~~  
90 ~~without awaiting the appointment of a personal representative~~  
91 ~~or the probate of a will if all of the following conditions~~  
92 ~~exist:~~

93 ~~(1) The value of the entire estate does not exceed~~  
94 ~~twenty-five thousand dollars (\$25,000). This figure shall be~~  
95 ~~adjusted annually for changes in the Consumer Price Index by~~  
96 ~~the State Finance Director who shall notify each judge of~~  
97 ~~probate of the newly adjusted figure.~~

98 ~~(2) The decedent died a resident of this state.~~

99 ~~(3) No petition for the appointment of a personal~~  
100 ~~representative is pending or has been granted.~~

101 ~~(4) At least 30 days have elapsed since the notice of~~  
102 ~~the filing of the petition was published as hereinafter~~  
103 ~~provided.~~

104 ~~(5) All funeral expenses of the decedent have been~~  
105 ~~paid, or alternatively, that arrangements for the payment out~~  
106 ~~of the estate of the decedent of all unpaid funeral expenses~~  
107 ~~have been made by the surviving spouse or other distributee.~~

108 ~~(6) If the decedent died intestate, the awards due~~  
109 ~~under Alabama descent and distribution statutes to the~~  
110 ~~surviving spouse and to the child or children have been~~  
111 ~~determined by the judge of probate.~~

112 ~~(7) If the decedent died testate, a document purporting~~



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~~to be his or her will, which on its face, is properly executed, witnessed, and attested in compliance with Alabama law, has been duly filed in the office of the judge of probate.~~

~~(8) Notice of the filing of a petition for a summary distribution under this division shall be published once in a newspaper of general circulation in the county in which the decedent was domiciled, or if there is no newspaper of general circulation in the county, then notice thereof shall be posted at the county courthouse for one week.~~

~~(9) All claims against the decedent's estate have been paid or arrangements for the payment out of the estate of the decedent have been made by the surviving spouse or other distributee according to the following priority:~~

~~a. First, to each person entitled to payment for any funeral expenses owed by the decedent or his or her estate.~~

~~b. To the judge of probate for fees and charges incurred in the proceedings for summary distribution.~~

~~c. To any person entitled to payment for expenses incurred in the decedent's last illness.~~

~~d. To the State of Alabama, the county, and any municipality therein for taxes assessed on the estate of the decedent previous to his or her death.~~

~~e. To each secured creditor.~~

~~f. To each unsecured lienholder.~~

~~g. To each remaining general unsecured creditor of the decedent.~~

~~h. To each surviving spouse, child, or other~~



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~~distributee who is entitled to take under Alabama's descent and distribution laws, or, alternatively, to each devisee entitled to take under any testamentary disposition of the decedent.~~

(b) The petition for summary distribution shall provide the following information and allege the following conditions:

(1) The decedent died domiciled in this state and was domiciled in the county in which the petition is filed.

(2) The decedent's estate is a small estate.

(3) A description of the personal property constituting the decedent's estate and the value.

(4) No petition for the appointment of a personal representative is pending nor has one been granted.

(5) The name, address, age, capacity, and relationship to the decedent of: (i) the petitioner; (ii) each person who would be entitled to an interest in the decedent's estate under the laws of descent and distribution of this state; and (iii) each person entitled to an interest in the decedent's estate under any will of the decedent filed with the petition. "Capacity" as used in this subdivision means whether the person is 19 years of age or older and whether the person is of sound mind.

(6) If the decedent was survived by a spouse, that the decedent's surviving spouse is entitled to the decedent's estate.

(7) If the decedent died without a surviving spouse and without a self-proved will which does not dispose of all of the small estate, the names of the persons who are entitled to



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the decedent's estate under the descent and distribution statutes of this state and their respective shares.

(8) If the decedent died with a will.

(9) If the decedent died with no surviving spouse and with a self-proved will, the names of the persons who are entitled under such self-proved will to a share or interest in the decedent's estate and their respective shares or interests.

(10) All funeral expenses of the decedent have been paid or arrangements for the payment out of the estate of the decedent of all unpaid funeral expenses have been made by or on behalf of the petitioner.

(11) All claims against the decedent's estate have been paid or arrangements for the payment out of the estate of the decedent have been made by the petitioner.

(c) Upon the filing of a petition for summary distribution under this division both of the following shall occur:

(1) Notice of the filing of the petition shall be published once in a newspaper of general circulation in the county in which the decedent was domiciled or, if there is no newspaper of general circulation in the county, the notice of the filing shall be posted at the county courthouse for one week.

(2) The petitioner shall notify the Alabama Medicaid Agency of the filing of the petition as provided in Section 43-2-698 and shall provide proof of such notice to the probate court.





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(d) The probate court shall not enter an order directing summary distribution pursuant to a petition under this division unless:

(1) At least 30 days have elapsed since the notice of the filing of the petition was published as provided in subsection (c);

(2) At least 30 days have elapsed since the Alabama Medicaid Agency received notice of the filing of the petition; and

(3) It appears to the probate court that all of the conditions for summary distribution provided in this subsection have been met and that the petition is due to be granted."

"§43-2-693

~~When all of~~ (a) Upon finding that the applicable conditions requirements enumerated in subsection (b) of Section 43-2-692 occur this division have been met, the judge of probate shall enter an order directing a summary distribution of the estate delineating the portion of the small estate that each person identified in the order is entitled.

(b) The order issued by the court under subsection (a) shall be final and conclusive as to all items and matters shown, and appeals must be taken in the manner provided for from any other final decree of the court in connection with the administration of decedents' estates."

"§43-2-694

Upon delivering a copy of the judge of probate's ~~judge's order for~~ directing summary distribution, ~~or an~~



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affidavit executed by any person having knowledge of the fact and alleging the concurrence of the conditions listed in subsection (b) of section 43-2-692 showing the defeasible right therein, together with a copy of the decedent's will if the claim is under such will, such spouse or distributee shall ~~be~~ the persons entitled to summary distribution of the decedent's estate under this division shall be entitled to have the decedent's property or the evidence of the decedent's ownership in such property transferred to ~~him~~ them by any person owing any money to the decedent's estate, having custody of any personal property of the decedent or acting as a registrar or transfer agent of any evidence of interest, indebtedness, property, or right of the deceased therein."

"§43-2-695

The ~~defeasible~~ right of the ~~surviving spouse or distributee~~ a person to summary distribution of a decedent's estate provided for by this division shall be subject only to any preexisting rights to administer the estate or probate the will, or to the superior rights of any other person to such personal property."

"§43-2-696

The person making payment, delivery, transfer, or issuance of personal property or evidence thereof pursuant to an order for summary distribution issued under this division ~~the affidavit prescribed in section 43-2-694~~ shall be discharged and released to the same extent as if made to a personal representative of the decedent, and ~~he~~ the person shall not be required to see the petition ~~application~~ thereof



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or to inquire into the truth of any statement in the affidavit~~petition~~ if made by any other person. If any person to whom such ~~order~~affidavit is delivered refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, ~~it~~the personal property may be recovered or its payment, delivery, transfer, or issuance compelled in an action brought for such purpose by or on behalf of the person entitled thereto under ~~sections~~Sections 43-2-691.1, 43-2-692, and 43-2-695 upon proof of the ~~defeasible~~ right declared by such sections. ~~Any person to whom payment, delivery, transfer or issuance is made shall be answerable and accountable therefor to any personal representative of the estate or to the surviving spouse or minor children of the decedent who shall proceed against such person, or to any other person having a superior right to the decedent's estate."~~

"§43-8-40

If an estate is not a small estate under Section 43-2-691 that is being distributed as a summary distribution under Division 10 of Article 18 of Chapter 2 of Title 43, then any~~Any~~ part of the estate of a decedent not effectively disposed of by the decedent's~~his~~ will passes to the decedent's~~his~~ heirs as prescribed in the following sections of this chapter."

"§43-8-252

(a) A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, ~~he~~the person is married to the decedent at the time of death. A



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decree of separation ~~which~~that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of ~~sections~~Sections 43-2-690 through 43-2-698, 43-8-40 through 43-8-49, 43-8-55 through 43-8-58, 43-8-70 through 43-8-76, 43-8-90, 43-8-91, and 43-8-110 through 43-8-113, a surviving spouse does not include:

(1) A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently remarry; ~~participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;~~

(2) A person who, following a decree or judgment of divorce or annulment obtained by the decedent, marries ~~participates in a marriage ceremony with~~ a third person; or

(3) A person who is a party to a valid proceeding concluded by an order purporting to terminate all marital property rights."

Section 2. Sections 43-2-691.1, 43-2-697, 43-2-698, and 43-8-23 are added to the Code of Alabama 1975, to read as follows:

### §43-2-691.1

(a) During the pendency of a summary disposition, any person entitled to the homestead allowance under Section 43-8-110, exempt property under Section 43-8-111, or the family allowance under Sections 43-8-112 and 43-8-113 may file a verified petition in the office of the judge of probate in



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which the summary distribution is pending. The petition shall set forth the person's entitlement to the exemption and allowances. The probate court, upon review and approval of the petition, may enter an order for disbursing the exemption and allowances from the small estate to the person in accordance with Sections 43-8-110, 43-8-111, or 43-8-112 and 43-8-113.

(b) The remainder of the small estate of a decedent domiciled in Alabama at the time of the decedent's death, following the exemption and allowances disposition made in accordance with subsection (a) that meets all of the conditions of this division, shall be distributed as follows:

(1) To the surviving spouse of the decedent.

(2) If the decedent died with a self-proved will and with no surviving spouse, to those persons entitled to the decedent's estate under such will, and to those persons entitled to share in the decedent's estate under the laws of descent and distribution of this state for the part of the decedent's estate not effectively disposed of by the decedent's self-proved will.

(3) If the decedent died without a surviving spouse and without a self-proved will, to those persons entitled to share in the decedent's estate under the laws of descent and distribution of this state.

§43-2-697

Whenever fraud had been perpetrated in connection with any proceeding or in any statement filed under this division or if fraud is used to avoid or circumvent the provisions or purposes of this division, any person injured by these actions



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may obtain appropriate relief against the perpetrator of the fraud or receive restitution from any person, other than a bona fide purchaser, benefiting from the fraud, whether innocent or not. Any proceeding must be commenced within one year after the discovery of the fraud or from the time when the fraud should have been discovered, but no proceeding may be brought against anyone who did not perpetrate the fraud later than five years after the time of the commission of the fraud. This section has no effect on remedies related to fraud perpetrated against a decedent during the decedent's lifetime which affects the succession of the decedent's estate.

### §43-2-698

The small estate amount shall at all times be equal to the combined maximum amount of the homestead allowance, exempt property, and family allowance provided under Sections 43-8-110 through 43-8-113, as adjusted pursuant to Section 43-8-116.

### §43-8-23

In the event the estate qualifies as a small estate under Section 43-2-691, the summary distribution proceedings for a small estate under Division 10 of Article 18 of Chapter 2 of Title 43 are available to the small estate.

Section 3. This act shall become effective on October 1, 2025.



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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 18-Feb-25, as amended.

John Treadwell  
Clerk

Senate	<hr/> <b>07-May-25</b> <hr/>	Amended and Passed
House	<hr/> <b>07-May-25</b> <hr/>	Concurred in Senate Amendment