

SB106 INTRODUCED



1 SB106
2 WTSR5EE-1
3 By Senators Smitherman, Williams, Kelley, Roberts, Waggoner,
4 Coleman-Madison, Albritton, Livingston
5 RFD: Judiciary
6 First Read: 05-Feb-25



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SYNOPSIS:

Under existing law, the Alabama Small Estates Act allows the surviving spouse or other distributee of a decedent, who owns no real property at the time of death, to receive in a summary manner the decedent's personal property, provided the value of this personalty is not in excess of \$25,000, or such adjustments to that amount as made on an annual basis by the State Finance Director based on changes in the Consumer Price Index.

This bill would raise the threshold amount distributable under the Small Estates Act to the combined maximum amount, as adjusted from time to time based on the Consumer Price Index, as allowed under the homestead allowance, exempt property, and family allowance, which is currently adjusted to \$47,000.

This bill would streamline the procedure for both claiming exemptions and allowances in a small estate and for settling the small estate.

This bill would further clarify who is a surviving spouse under an intestate estate when there is a divorce, annulment, or separation.

This bill would also expressly permit summary distributions of small estates under the Probate code.



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A BILL
TO BE ENTITLED
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



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57 and phrases ~~shall~~ have the following meanings ~~respectively~~
58 ~~ascribed to them by this section:~~

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

62 (1) DECEDENT. A deceased person whose estate is subject
63 to summary distribution under this division.

64 ~~(2) DISTRIBUTEES. The persons who are entitled to the~~
65 ~~personal property of a decedent under the terms of a~~
66 ~~testamentary disposition or under the Alabama descent and~~
67 ~~distribution statutes.~~

68 ~~(3)~~ (2) ESTATE. All the personal property of a decedent
69 who owns no real property at the time of his or her death for
70 which title does not pass by operation of law.

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

74 ~~(5)~~ (3) PERSON. ~~The term includes natural persons and~~
75 ~~corporations.~~ A natural person, corporation, organization,
76 other legal entity, or any trust or trustee.

77 ~~(6)~~ (4) PERSONAL REPRESENTATIVE. ~~The term includes an~~An
78 executor, administrator, administrator with the will annexed,
79 ~~and~~ special administrator, and successor personal
80 representative.

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

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



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85 (7) SMALL ESTATE AMOUNT. The sum as adjusted from time
86 to time based on the Consumer Price Index formula set forth in
87 Section 43-8-116 of the homestead allowance under Section
88 43-8-110, exempt property under Section 43-8-111, and the
89 family allowance under Sections 43-8-112 and 43-8-113.

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

93 (9) SURVIVING SPOUSE. The spouse of the decedent at the
94 time of decedent's death, provided the spouse is a surviving
95 spouse under Section 43-8-252 and is not an individual
96 claiming to be a spouse under common law, whether or not such
97 common law marriage allegedly occurred before or after January
98 1, 2017."

99 "§43-2-692

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

109 (a) A person, or a person duly authorized to act for
110 the person, entitled to an interest in a small estate under
111 this division may initiate a proceeding for summary
112 distribution of the estate by filing a verified petition in



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113 the office of the judge of probate of the county in which the
114 decedent was domiciled at death. No bond shall be required to
115 be filed with the petition. If the decedent died with a
116 self-proved will, the self-proved will shall be filed with the
117 petition.

118 ~~(b) The surviving spouse or distributee shall have a~~
119 ~~defeasible right to the personal property of the decedent~~
120 ~~without awaiting the appointment of a personal representative~~
121 ~~or the probate of a will if all of the following conditions~~
122 ~~exist:~~

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

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

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

131 ~~(4) At least 30 days have elapsed since the notice of~~
132 ~~the filing of the petition was published as hereinafter~~
133 ~~provided.~~

134 ~~(5) All funeral expenses of the decedent have been~~
135 ~~paid, or alternatively, that arrangements for the payment out~~
136 ~~of the estate of the decedent of all unpaid funeral expenses~~
137 ~~have been made by the surviving spouse or other distributee.~~

138 ~~(6) If the decedent died intestate, the awards due~~
139 ~~under Alabama descent and distribution statutes to the~~
140 ~~surviving spouse and to the child or children have been~~



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141 ~~determined by the judge of probate.~~

142 ~~(7) If the decedent died testate, a document purporting~~
143 ~~to be his or her will, which on its face, is properly~~
144 ~~executed, witnessed, and attested in compliance with Alabama~~
145 ~~law, has been duly filed in the office of the judge of~~
146 ~~probate.~~

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

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

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

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

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

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

166 ~~e. To each secured creditor.~~

167 ~~f. To each unsecured lienholder.~~

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



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169 ~~decedent.~~

170 ~~h. To each surviving spouse, child, or other~~
171 ~~distributee who is entitled to take under Alabama's descent~~
172 ~~and distribution laws, or, alternatively, to each devisee~~
173 ~~entitled to take under any testamentary disposition of the~~
174 ~~decedent.~~

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

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

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

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

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

184 (5) The name, address, age, capacity, and relationship
185 to the decedent of: (i) the petitioner; (ii) each person who
186 would be entitled to an interest in the decedent's estate
187 under the laws of descent and distribution of this state; and
188 (iii) each person entitled to an interest in the decedent's
189 estate under any will of the decedent filed with the petition.

190 "Capacity" as used in this subdivision means whether the
191 person is 19 years of age or older and whether the person is
192 of sound mind.

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

196 (7) If the decedent died without a surviving spouse and



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197 without a self-proved will which does not dispose of all of
198 the small estate, the names of the persons who are entitled to
199 the decedent's estate under the descent and distribution
200 statutes of this state and their respective shares.

201 (8) If the decedent died with a will.

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

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

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

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

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

223 (2) The petitioner shall notify the Alabama Medicaid
224 Agency of the filing of the petition as provided in Section



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225 43-2-698 and shall provide proof of such notice to the probate
226 court.

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

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

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

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

240 "§43-2-693

241 ~~When all of~~ (a) Upon finding that the applicable
242 ~~conditions~~ requirements enumerated in ~~subsection (b) of Section~~
243 ~~43-2-692 occur~~ this division have been met, the judge of
244 probate shall enter an order directing ~~a~~ summary distribution
245 of the estate delineating the portion of the small estate that
246 each person identified in the order is entitled.

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

252 "§43-2-694



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253 Upon delivering a copy of the judge of probate's
254 ~~judge's~~ order ~~for~~directing summary distribution, ~~or an~~
255 ~~affidavit executed by any person having knowledge of the fact~~
256 ~~and alleging the concurrence of the conditions listed in~~
257 ~~subsection (b) of section 43-2-692 showing the defeasible~~
258 ~~right therein, together with a copy of the decedent's will if~~
259 ~~the claim is under such will, such spouse or distributee shall~~
260 ~~be~~ the persons entitled to summary distribution of the
261 decedent's estate under this division shall be entitled to
262 have the decedent's property or the evidence of the decedent's
263 ownership in such property transferred to ~~him~~ them by any
264 person owing any money to the decedent's estate, having
265 custody of any personal property of the decedent or acting as
266 a registrar or transfer agent of any evidence of interest,
267 indebtedness, property, or right of the deceased therein."

268 "§43-2-695

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

275 "§43-2-696

276 The person making payment, delivery, transfer, or
277 issuance of personal property or evidence thereof pursuant to
278 an order for summary distribution issued under this division
279 ~~the affidavit prescribed in section 43-2-694~~ shall be
280 discharged and released to the same extent as if made to a



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281 personal representative of the decedent, and ~~h~~the person
282 shall not be required to see the petition~~application thereof~~
283 or to inquire into the truth of any statement in the
284 ~~affidavit~~petition if made by any other person. If any person
285 to whom such order~~affidavit~~ is delivered refuses to pay,
286 deliver, transfer, or issue any personal property or evidence
287 thereof, ~~it~~the personal property may be recovered or its
288 payment, delivery, transfer, or issuance compelled in an
289 action brought for such purpose by or on behalf of the person
290 entitled thereto under ~~sections~~Sections 43-2-691.1, 43-2-692,
291 and 43-2-695 upon proof of the ~~defeasible~~ right declared by
292 such sections. ~~Any person to whom payment, delivery, transfer~~
293 ~~or issuance is made shall be answerable and accountable~~
294 ~~therefor to any personal representative of the estate or to~~
295 ~~the surviving spouse or minor children of the decedent who~~
296 ~~shall proceed against such person, or to any other person~~
297 ~~having a superior right to the decedent's estate."~~

298 "§43-8-40

299 If an estate is not a small estate under Section
300 43-2-691 that is being distributed as a summary distribution
301 under Division 10 of Article 18 of Chapter 2 of Title 43, then
302 any~~Any~~ part of the estate of a decedent not effectively
303 disposed of by the decedent's~~his~~ will passes to the
304 decedent's ~~his~~ heirs as prescribed in the following sections
305 of this chapter."

306 "§43-8-252

307 (a) A person who is divorced from the decedent or whose
308 marriage to the decedent has been annulled is not a surviving



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309 spouse unless, by virtue of a subsequent marriage, ~~hethe~~
310 person is married to the decedent at the time of death. A
311 decree of separation ~~which~~that does not terminate the status
312 of husband and wife is not a divorce for purposes of this
313 section.

314 (b) For purposes of ~~sections~~Sections 43-2-690 through
315 43-2-698, 43-8-40 through 43-8-49, 43-8-55 through 43-8-58,
316 43-8-70 through 43-8-76, 43-8-90, 43-8-91, and 43-8-110
317 through 43-8-113, a surviving spouse does not include:

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

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

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

330 Section 2. Sections 43-2-691.1, 43-2-697, 43-2-698, and
331 43-8-23 are added to the Code of Alabama 1975, to read as
332 follows:

333 §43-2-691.1

334 (a) During the pendency of a summary disposition, any
335 person entitled to the homestead allowance under Section
336 43-8-110, exempt property under Section 43-8-111, or the



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337 family allowance under Sections 43-8-112 and 43-8-113 may file
338 a verified petition in the office of the judge of probate in
339 which the summary distribution is pending. The petition shall
340 set forth the person's entitlement to the exemption and
341 allowances. The probate court, upon review and approval of the
342 petition, may enter an order for disbursing the exemption and
343 allowances from the small estate to the person in accordance
344 with Sections 43-8-110, 43-8-111, or 43-8-112 and 43-8-113.

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

350 (1) To the surviving spouse of the decedent.

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

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

362 §43-2-697

363 Whenever fraud had been perpetrated in connection with
364 any proceeding or in any statement filed under this division



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365 or if fraud is used to avoid or circumvent the provisions or
366 purposes of this division, any person injured by these actions
367 may obtain appropriate relief against the perpetrator of the
368 fraud or receive restitution from any person, other than a
369 bona fide purchaser, benefiting from the fraud, whether
370 innocent or not. Any proceeding must be commenced within one
371 year after the discovery of the fraud or from the time when
372 the fraud should have been discovered, but no proceeding may
373 be brought against anyone who did not perpetrate the fraud
374 later than five years after the time of the commission of the
375 fraud. This section has no effect on remedies related to fraud
376 perpetrated against a decedent during the decedent's lifetime
377 which affects the succession of the decedent's estate.

378 §43-2-698

379 The small estate amount shall at all times be equal to
380 the combined maximum amount of the homestead allowance, exempt
381 property, and family allowance provided under Sections
382 43-8-110 through 43-8-113, as adjusted pursuant to Section
383 43-8-116.

384 §43-8-23

385 In the event the estate qualifies as a small estate
386 under Section 43-2-691, the summary distribution proceedings
387 for a small estate under Division 10 of Article 18 of Chapter
388 2 of Title 43 are available to the small estate.

389 Section 3. This act shall become effective on October
390 1, 2025.