## **State of South Dakota**

## NINETY-SECOND SESSION LEGISLATIVE ASSEMBLY, 2017

## 200Y0054

## HOUSE BILL NO. 1054

Introduced by: The Committee on Judiciary at the request of the Chief Justice

- 1 FOR AN ACT ENTITLED, An Act to require documented proof of death for a petition for
- 2 informal probate.

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

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

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, birthdate and date of death of the decedent, the county and state of



Insertions into existing statutes are indicated by <u>underscores</u>. Deletions from existing statutes are indicated by <del>overstrikes</del>.

1			the decedent's domicile at the time of death, and, so far as known or
2			ascertainable with reasonable diligence by the applicant, the names and
3			addresses of the heirs and devisees and the ages of any who are minors;
4		(iii)	If the decedent was not domiciled in the state at the time of death, a statement
5			showing venue;
6		(iv)	A statement identifying and indicating the address of any personal
7			representative of the decedent appointed in this state or elsewhere whose
8			appointment has not been terminated;
9		(v)	A statement indicating whether the applicant has received a demand for notice,
10			or is aware of any demand for notice of any probate or appointment
11			proceeding concerning the decedent that may have been filed in this state or
12			elsewhere; and
13		(vi)	A statement that the time limit for informal probate or appointment as
14			provided in this chapter has not expired either because three years or less have
15			passed since the decedent's death, or, if more than three years from death have
16			passed, circumstances as described by § 29A-3-108 authorizing late probate
17			or appointment have occurred;
18	(2)	An a	pplication for informal probate of a will shall state the following in addition to
19		the st	tatements required by subdivision (1):
20		(i)	That the original of the decedent's will is in the possession of the court, or
21			accompanies the application, or that a certified copy of a will probated in
22			another jurisdiction accompanies the application;
23		(ii)	That the applicant, to the best of the applicant's knowledge, believes the will
24			to have been validly executed;

1		(iii) That the applicant believes that the instrument which is the subject of the
2		application is the decedent's will, and that after the exercise of reasonable
3		diligence, the applicant is unaware of any instrument revoking the will or of
4		any other unrevoked testamentary instrument relating to property having a
5		situs in this state under § 29A-1-301, or, a statement why any such unrevoked
6		testamentary instrument of which the applicant may be aware is not being
7		probated;
8	(3)	An application for informal probate of a will shall have a certified copy of the
9		decedent's death certificate attached or other certified death record issued by a
10		government agency as described in subdivisions 29A-1-107(2) and (3). If the death
11		certificate is not available, the applicant shall provide alternative documentation of
12		the decedent's death:
13	<u>(4)</u>	An application for informal appointment of a personal representative to administer
14		an estate under a will shall describe the will by date of execution and state the time
15		and place of probate or the pending application or petition for probate. The
16		application for appointment shall adopt the statements in the application or petition
17		for probate and state the name, address, and priority for appointment of the person
18		whose appointment is sought;
19	<del>(4)<u>(5)</u></del>	An application for informal appointment of a personal representative in intestacy
20		shall state in addition to the statements required by subdivision (1):
21		(i) That after the exercise of reasonable diligence, the applicant is unaware of any
22		unrevoked testamentary instrument relating to property having a situs in this
23		state under § 29A-1-301, or, a statement why any such instrument of which the
24		applicant may be aware is not being probated;

1	(ii)	The name, address, and priority for appointment of the person whose
2		appointment is sought and the names of any other persons having a prior or
3		equal right to the appointment under § 29A-3-203;

- 4 (5)(6) An application for appointment of a personal representative to succeed a personal
  5 representative appointed under a different testacy status shall refer to the order in the
  6 most recent testacy proceeding, state the name and address of the person whose
  7 appointment is sought and of the person whose appointment will be terminated if the
  8 application is granted, and describe the priority of the applicant;
- 9 (6)(7) An application for appointment of a personal representative to succeed a personal
  10 representative who has tendered a resignation as provided in § 29A-3-610(c), or
  11 whose appointment has been terminated by death or removal, shall adopt the
  12 statements in the application or petition which led to the appointment of the person
  13 being succeeded except as specifically changed or corrected, state the name and
  14 address of the person who seeks appointment as successor, and describe the priority
  15 of the applicant.

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