

# 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



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 application for informal probate of a will shall state the following in addition to  
19 the statements 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 (4) 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 ~~(4)~~(5) 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;

