



TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

UPDATE OF PROVISIONS OF THE PROBATE CODE PERTAINING TO THE COLLECTION OR TRANSFER OF SMALL ESTATES WITHOUT FORMAL PROBATE ADMINISTRATION

LEGISLATIVE PROPOSAL (T&E-2010-08)

TO: Saul Bercovitch, Legislative Counsel
State Bar Office of Governmental Affairs

FROM: Margaret M. Hand, Patrick A. Kohlmann and Jeremy B. Crickard

DATE: January 29, 2009

RE: Collection or Transfer of Small Estate without Administration and Passage of
Property to Surviving Spouse without Administration.
- Proposal to amend §§ 13050, 13100, 13101, 13151, 13152, 13154, 13200,
13600, 13601 and 13602 of the Probate Code.

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee: July 19, 2008

Approval vote: 19 Yes; 0 No; 1 Abstain

Contact	Section Legislative Chair
Margaret M. Hand Law Offices of Margaret M. Hand 1939 Harrison Street, Suite 200 Oakland, CA 94612 Phone: (510) 444-6044 Fax: (510) 444-7044 margaret@handlaw.com	Edward J. Corey, Jr. Weintraub Genshlea Chediak 400 Capitol Mall, 11 th Floor Sacramento, CA 95814 Phone: (916) 558-6017 Fax: (916) 446-1611 ecorey@weintraub.com
	Richard L. Ehrman Thoits Love Hershberger & McLean 285 Hamilton Avenue, #300 Palo Alto, CA 94301 Phone: (650) 327-4200 Fax: (650) 325-5572 rehman@thoits.com

SUMMARY OF PROPOSAL:

In enacting Division 8 of the Probate Code, the California Legislature provided several mechanisms for small estates to accomplish the disposition of a decedent's estate without the need for a formal probate administration. In enacting this statutory scheme, the Legislature provided for limits on the size of estate that would be able to take advantage of these provisions, with the dollar amount of each limit differing depending upon the type of asset to be transferred or collected. These thresholds were increased in 1984 and again in 1996 to keep pace with inflation and the rise in asset values that occurs over time.

It has been 13 years since the small estate limits were last increased, during which time the nominal value of small estates has increased. As a result, small estates that would have qualified to use the small estate provisions as enacted would no longer qualify to use these procedures. This legislative proposal seeks to raise the small estate limits to account for inflation, the rise in asset values that occurs over time, increases in the costs and time delays involved in formal probate administration, and increased burdens on the court system.

ISSUES AND PURPOSE:

Division 8 of the California Probate Code provides the following procedures for the disposition of a decedent's estate without the need for a formal probate administration:

- Probate Code section 13100 allows the use of an affidavit or declaration to collect the decedent's personal property when the decedent's real and personal property not described in section 13050 does not exceed \$100,000. The Legislature increased this limit from \$30,000 to \$60,000 in 1984 and again from \$60,000 to \$100,000 in 1996. This legislative proposal would further increase the limit to \$200,000.
- Probate Code section 13151 allows the use of a simplified petition to collect the decedent's interests in real property, provided the gross value of the decedent's real and personal property not described in section 13050 is valued at \$100,000 or less. The Legislature last increased this limit from \$60,000 to \$100,000 in 1996. This legislative proposal would further increase the limit to \$200,000.
- Probate Code section 13200 allows the use of an affidavit to collect the decedent's interests in real property, provided the gross value of all real property in the decedent's estate located in California does not exceed \$20,000. This limit was last adjusted in 1996, when it was increased from \$10,000 to \$20,000. This legislative proposal would further increase the limit to \$100,000.
- Probate Code section 13600 allows a surviving spouse to collect from the decedent's employer "salary or other compensation owed by an employer for personal services of the deceased spouse, including compensation for unused vacation, not in excess of five thousand dollars (\$5,000)." The stated amount, \$5,000, has been adjusted by the statute's cost of living adjustment, but this

section otherwise has not been amended to increase the amount that the surviving spouse may collect. This legislative proposal would increase the limit to \$15,000.

These sections serve a valuable purpose by allowing small estates to avoid formal probate administration. These sections allow heirs and beneficiaries of such small estates to avoid the burdens and delays of formal probate administration. These sections also allow heirs and beneficiaries to avoid costs which amount to a considerable percentage of a small estate. They also reduce the burdens on the judicial system and allow the courts to more efficiently focus on matters requiring greater judicial oversight and resources. But again, inflation values and the fact that the limits have not been increased in 13 years have made these provisions unavailable for an increasing number of small estates that historically would have qualified for the use of these procedures. In enacting these provisions, the Legislature sought to balance the need for judicial oversight in formal probate administrations with the needs of judicial economy and to avoid overburdening small estates with administrative expenses. The Legislature has regularly re-emphasized the importance of maintaining this balance by adjusting the applicable limits regularly over time. The Executive Committee of the Trusts and Estates Section of the State Bar of California (“TEXCOM”) believes these limits should again be increased so these statutes may continue to serve the purpose for which they were enacted.

Specifically, the limits should be increased as summarized below.

- The limits applicable to section 13100 affidavits and section 13150 petitions should be increased from \$100,000 to \$200,000 because it has been 13 years since the last increase, because real property values have increased, because salaries have increased, because the costs and burdens of formal probate administration have increased and because the burdens on the judiciary have also increased.
- For the same reasons, the limit applicable to section 13200 affidavits should be increased from \$20,000 to \$100,000.
- Similarly, Section 13600 should be amended to allow collection of up to \$15,000 in compensation, etc., because presently the base amount is too low. If a decedent dies near the end of his pay period, particularly if his employer pays monthly and owes the employee for several weeks of accrued vacation, the compensation payable by the employer will often exceed \$5,000. Though this limit is subject to a cost of living adjustment, it is often difficult for a grieving widow or widower to compose himself or herself sufficiently to research the effect of that adjustment. The simplified procedures for administering a decedent’s estate are designed to reduce the survivor’s reliance on paid advisors and speed the collection of relatively small amounts. These purposes are not fulfilled if the widow or widower cannot calculate the amount that may be collected from the decedent’s employer without the advice of counsel. Therefore, TEXCOM believes the amount that a surviving spouse may collect from the decedent’s employer under section 13600 should be increased from \$5,000 to \$15,000.

IMPACT ON PENDING LITIGATION:

None known.

HISTORY:

As previously noted, the Legislature has regularly increased the threshold limits applicable to small estates for which formal probate administration is not required. In 1984, the 13100 affidavit threshold was increased from \$30,000 to \$60,000 (AB 2270 (McAlister)), and then twelve years later the threshold was increased to \$100,000 (AB 2146 (Rainey), Chap. 86, Stats. 1996). In 2006 (AB 2267 (Huff)) and 2007 (SB 553 (Aanestad)) legislation was introduced seeking to raise these thresholds again.

AB 2267 sought to amend Probate Code sections 13100, 13101, 13151, 13152, and 13200, relating to decedent's estates. Specifically, the bill proposed to increase the limits on the following Probate Code sections: 13100 (transfer without a court proceeding of up to \$100,000 of personal property); 13151 (court-supervised transfer of a decedent's real property, provided the gross value of the decedent's property subject to summary administration does not exceed \$100,000); and 13200 (transfer without a court proceeding of real property the value of which does not exceed \$20,000).

AB 2267 sought the following increases in the limits applicable to small estate proceedings: an increase of the section 13100 affidavit threshold from \$100,000 to \$200,000; an increase of the section 13151 petition threshold from \$100,000 to \$200,000; and an increase in the section 13200 affidavit threshold from \$20,000 to \$100,000.

SB 553 sought similar increases in the thresholds applicable to sections 13100, 13151 and 13200, and also sought an increase in the section 13600 threshold (collection of salary or other compensation by surviving spouse) from \$5,000 to \$15,000.

Both AB 2267 and SB 553 failed passage in the Assembly Judiciary Committee. An issue was raised about increased funding for the Public Guardian, but that does not appear to be an issue with this proposed legislation at this time. Heir finders opposed AB 2267 and SB 553, as discussed in greater detail below.

TEXCOM here proposes legislation nearly identical to AB 2267, but which also includes an increase in the section 13600 threshold as proposed in SB 553. Specifically, this proposal seeks to increase the section 13100 affidavit threshold from \$100,000 to \$200,000, to increase the section 13151 petition threshold from \$100,000 to \$200,000, to increase the section 13200 affidavit threshold from \$20,000 to \$100,000 and to increase the section 13600 threshold from \$5,000 to \$15,000.

LIKELY SUPPORT & OPPOSITION:

Support

The California Association of Public Administrators, Public Guardians and Public Conservators previously supported similar legislation, SB 553 (Aanestad) of 2007, and therefore it is believed they will also support the proposed legislation.

Opposition

The proposed legislation has the potential to reduce the number of probates filed with the court. The filing of fewer probates will result in fewer opportunities for heir finders to find heirs. Individuals and companies that provide heir finder services have opposed similar legislation in the past on the grounds that the legislation would increase the opportunity for fraud in connection with the disposition of estates, as additional and larger estates would be removed from court oversight.

TEXCOM is not aware of any published legal decisions involving purported or actual fraudulent use of the Probate Code sections which are the subject of this proposed legislation. In addition, the experienced estate planning attorneys who are members of TEXCOM are not aware of any significant incidence of fraud through utilization of the small estate provisions that are the subject of this legislative proposal. Indeed, the members of TEXCOM were unaware of even a single example of such fraud. However, even if increasing the threshold for use of the small estate procedures could theoretically increase the opportunity for fraud, the Legislature has already dealt with the issue of fraudulent use of these statutes. Specifically, the Legislature expressly provided that individuals to whom assets are transferred under these statutes remain personally liable for unsecured debts of the decedent and any individual who fraudulently uses such procedures is subject to triple damages. (*See*, Prob. Code § 13110(b), § 13205(b), § 13605(b)).

The statutory scheme concerning use of the small estate procedures balances the potential for fraud against the costs and delays of formally probating a small estate. In balancing those issues, a determination has already been made that for estates of a certain size, the benefits of allowing small estates to avoid the burden of formal probate administration outweighs the potential for fraud.

Further, removing small estates from the already overburdened courts' dockets would allow judges to focus more attention on estates where actual misfeasance has been alleged or indicated.

For all of these reasons, TEXCOM believes that the existing statutory framework adequately addresses the issue of the potential fraudulent use of small estate proceedings. Within that framework, the Legislature struck the proper balance between the risk of these procedures and their benefits. The balance has been upset, however, by the effect of inflation, rising property values and the increased cost of court-supervised proceedings. Over time the

Legislature has regularly increased the threshold levels for small estate proceedings. TEXCOM believes another adjustment of these thresholds now is warranted and proper.

FISCAL IMPACT:

Increasing the limits of these procedures is intended to reduce the number of court-supervised administrations of decedent's estates, which would decrease the demand on the court's resources.

GERMANENESS:

The members of TEXCOM have used the simplified procedures that are the subject of this proposal both to administer small estates and to complete the administration of poorly or partially-planned larger estates. The matters addressed in this proposal require the special knowledge, training, experience and technical expertise of TEXCOM's members.

TEXT OF PROPOSAL:

Section 13050 of the Probate Code should be amended to read:

13050. (a) For the purposes of this part:

(1) Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, or which was held by the decedent and passed to the decedent's surviving spouse pursuant to Section 13500, shall be excluded in determining the property or estate of the decedent or its value. This excluded property shall include, but not be limited to, property in a trust revocable by the decedent during his or her lifetime.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the property or estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. For the purposes of this paragraph, the terms "multiple-party account," "party," "P.O.D. payee," and "beneficiary" are defined in Article 2 (commencing with Section 5120) of Chapter 1 of Part 2 of Division 5.

(b) For the purposes of this part, all of the following property shall be excluded in determining the property or estate of the decedent or its value:

(1) Any vehicle registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) Any vessel numbered under Division 3.5 (commencing with Section 9840) of the Vehicle Code.

(3) Any manufactured home, mobilehome, commercial coach, truck camper, or floating home registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(c) For the purposes of this part, the value of the following property shall be excluded in determining the value of the decedent's property in this state:

(1) Any amounts due to the decedent for services in the armed forces of the United States.

(2) The amount, not exceeding ~~five thousand dollars (\$5,000)~~ *fifteen thousand dollars (\$15,000)*, of salary or other compensation, including compensation for unused vacation, owing to the decedent for personal services from any employment.

Section 13100 of the Probate Code should be amended to read:

13100. Excluding the property described in Section 13050, if the gross value of the decedent's real and personal property in this state does not exceed ~~one hundred thousand dollars (\$100,000)~~ *two hundred thousand dollars (\$200,000)* and if 40 days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to one or more particular items of property:

- (a) Collect any particular item of property that is money due the decedent.
- (b) Receive any particular item of property that is tangible personal property of the decedent.
- (c) Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

Section 13101 of the Probate Code should be amended to read:

13101. (a) To collect money, receive tangible personal property, or have evidences of a debt, obligation, interest, right, security, or chose in action transferred under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the holder of the decedent's property stating all of the following:

- (1) The decedent's name.
- (2) The date and place of the decedent's death.
- (3) "At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration."
- (4) Either of the following, as appropriate:
 - (A) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."
 - (B) "The decedent's personal representative has consented in writing to the payment, transfer, or delivery to the affiant or declarant of the property described in the affidavit or declaration."
- (5) "The current gross fair market value of the decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed ~~one hundred thousand dollars (\$100,000)~~ *two hundred thousand dollars (\$200,000)*."

(6) A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant.

(7) The name of the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the described property.

(8) Either of the following, as appropriate:

(A) "The affiant or declarant is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent's interest in the described property."

(B) "The affiant or declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent (as defined in Section 13006 of the California Probate Code) with respect to the decedent's interest in the described property."

(9) "No other person has a superior right to the interest of the decedent in the described property."

(10) "The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant."

(11) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) If the particular item of property to be transferred under this chapter is a debt or other obligation secured by a lien on real property and the instrument creating the lien has been recorded in the office of the county recorder of the county where the real property is located, the affidavit or declaration shall satisfy the requirements both of this section and of Section 13106.5.

(d) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

(e) If the decedent's personal representative has consented to the payment, transfer, or delivery of the described property to the affiant or declarant, a copy of the consent and of the personal representative's letters shall be attached to the affidavit or declaration.

Section 13151 of the Probate Code should be amended to read:

13151. Exclusive of the property described in Section 13050, if a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed ~~one hundred thousand dollars (\$100,000)~~ *two hundred thousand dollars*

(\$200,000) and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting a court order determining that the petitioner has succeeded to that real property. A petition under this chapter may include an additional request that the court make an order determining that the petitioner has succeeded to personal property described in the petition.

Section 13152 of the Probate Code should be amended to read:

13152. (a) The petition shall be verified by each petitioner, shall contain a request that the court make an order under this chapter determining that the property described in the petition is property passing to the petitioner, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, as shown by the inventory and appraisal attached to the petition, does not exceed ~~one hundred thousand dollars (\$100,000)~~ *two hundred thousand dollars*.

(3) A description of the particular item of real property in this state which the petitioner alleges is property of the decedent passing to the petitioner, and a description of the personal property which the petitioner alleges is property of the decedent passing to the petitioner if the requested order also is to include a determination that the described personal property is property passing to the petitioner.

(4) The facts upon which the petitioner bases the allegation that the described property is property passing to the petitioner.

(5) Either of the following, as appropriate:

(A) A statement that no proceeding is being or has been conducted in this state for administration of the decedent's estate.

(B) A statement that the decedent's personal representative has consented in writing to use of the procedure provided by this chapter.

(6) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where those proceedings are pending or were conducted.

(7) The name, age, address, and relation to the decedent of each heir and devisee of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and, if the petitioner is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future

interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(8) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to any petitioner.

(b) There shall be attached to the petition an inventory and appraisal in the form set forth in Section 8802 of the decedent's real and personal property in this state, excluding the property described in Section 13050. The appraisal shall be made by a probate referee selected by the petitioner from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located. The appraisal shall be made as provided in Part 3 (commencing with Section 8800) of Division 7. The petitioner may appraise the assets which a personal representative could appraise under Section 8901.

(c) If the petitioner bases his or her claim to the described property upon the will of the decedent, a copy of the will shall be attached to the petition.

(d) If the decedent's personal representative has consented to use of the procedure provided by this chapter, a copy of the consent shall be attached to the petition.

Section 13154 of the Probate Code should be amended to read:

13154. (a) If the court makes the determinations required under subdivision (b), the court shall issue an order determining (1) that real property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property and (2) if the petition so requests, that personal property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property.

(b) The court may make an order under this section only if the court makes all of the following determinations:

(1) The gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, does not exceed ~~one hundred thousand dollars (\$100,000)~~ *two hundred thousand dollars (\$200,000)*.

(2) Not less than 40 days have elapsed since the death of the decedent.

(3) Whichever of the following is appropriate:

(A) No proceeding is being or has been conducted in this state for administration of the decedent's estate.

(B) The decedent's personal representative has consented in writing to use of the procedure provided by this chapter.

(4) The property described in the order is property of the decedent passing to the petitioner.

(c) If the petition has attached an inventory and appraisal that satisfies the requirements of subdivision (b) of Section 13152, the determination required by paragraph (1) of subdivision (b) of this section shall be made on the basis of the verified petition and the attached inventory and appraisal, unless evidence is offered by a person opposing the petition that the gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, exceeds ~~one hundred thousand dollars (\$100,000)~~ *two hundred thousand dollars (\$200,000)*.

Section 13200 of the Probate Code should be amended to read:

13200. Filing affidavit in superior court; Inventory and appraisal

(a) No sooner than six months from the death of a decedent, a person or persons claiming as successor of the decedent to a particular item of property that is real property may file in the superior court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state at the time of death, then in any county in which real property of the decedent is located, an affidavit in the form prescribed by the Judicial Council pursuant to Section 1001 stating all of the following:

(1) The name of the decedent.

(2) The date and place of the decedent's death.

(3) A legal description of the real property and the interest of the decedent therein.

(4) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to the affiant.

(5) "The gross value of all real property in the decedent's estate located in California, as shown by the inventory and appraisal attached to this affidavit, excluding the real property described in Section 13050 of the California Probate Code, does not exceed ~~twenty thousand dollars (\$ 20,000)~~ *one hundred thousand dollars (\$100,000)*."

(6) "At least six months have elapsed since the death of the decedent as shown in a certified copy of decedent's death certificate attached to this affidavit."

(7) Either of the following, as appropriate:

(A) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(B) "The decedent's personal representative has consented in writing to use of the procedure provided by this chapter."

(8) "Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid."

(9) "The affiant is the successor of the decedent (as defined in Section 13006 of the Probate Code) and to the decedent's interest in the described property, and no other person has a superior right to the interest of the decedent in the described property."

(10) "The affiant declares under penalty of perjury under the law of the State of California that the foregoing is true and correct."

(b) For each person executing the affidavit, the affidavit shall contain a notary public's certificate of acknowledgment identifying the person.

(c) There shall be attached to the affidavit an inventory and appraisal of the decedent's real property in this state, excluding the real property described in Section 13050. The inventory and appraisal of the real property shall be made as provided in Part 3 (commencing with Section 8800) of Division 7. The appraisal shall be made by a probate referee selected by the affiant from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located.

(d) If the affiant claims under the decedent's will and no estate proceeding is pending or has been conducted in California, a copy of the will shall be attached to the affidavit.

(e) A certified copy of the decedent's death certificate shall be attached to the affidavit. If the decedent's personal representative has consented to the use of the procedure provided by this chapter, a copy of the consent and of the personal representative's letters shall be attached to the affidavit.

(f) The affiant shall mail a copy of the affidavit and attachments to any person identified in paragraph (4) of subdivision (a).

Section 13600 of the Probate Code should be amended to read:

13600. Collection of salary or other compensation by surviving spouse, guardian, or conservator; Net limitation; Adjustment of maximum net amount

(a) At any time after a husband or wife dies, the surviving spouse or the guardian or conservator of the estate of the surviving spouse may, without procuring letters of administration or awaiting probate of the will, collect salary or other compensation owed by an employer for personal services of the deceased spouse, including compensation for unused vacation, not in excess of ~~five thousand dollars (\$ 5,000)~~ *fifteen thousand dollars (\$15,000)* net.

(b) Not more than ~~five thousand dollars (\$ 5,000)~~ *fifteen thousand dollars (\$15,000)* net in the aggregate may be collected by or for the surviving spouse under this chapter from all of the employers of the decedent.

(c) For the purposes of this chapter, a guardian or conservator of the estate of the surviving spouse may act on behalf of the surviving spouse without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

(d) The ~~five thousand dollar (\$ 5,000)~~ *fifteen thousand dollars (\$15,000)* net limitation set forth in subdivisions (a) and (b) does not apply to the surviving spouse or the guardian or conservator of the estate of the surviving spouse of a firefighter or peace officer described in subdivision (a) of Section 22820 of the Government Code.

(e) On January 1, 2010, and on January 1 of each year thereafter, the maximum net amount of salary or compensation payable under subdivisions (a) and (b) to the surviving spouse or the guardian or conservator of the estate of the surviving spouse may be adjusted to reflect any increase in the cost of living occurring after January 1 of the immediately preceding year. The United States city average of the "Consumer Price Index for all Urban Consumers," as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. The cost-of-living increase shall equal or exceed 1 percent before any adjustment is made. The net amount payable may not be decreased as a result of the cost-of-living adjustment.

Section 13601 of the Probate Code should be amended to read:

13601. (a) To collect salary or other compensation under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the employer of the deceased spouse stating all of the following:

(1) The name of the decedent.

(2) The date and place of the decedent's death.

(3) Either of the following, as appropriate:

(A) "The affiant or declarant is the surviving spouse of the decedent."

(B) "The affiant or declarant is the guardian or conservator of the estate of the surviving spouse of the decedent."

(4) "The surviving spouse of the decedent is entitled to the earnings of the decedent under the decedent's will or by intestate succession and no one else has a superior right to the earnings."

(5) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(6) "Sections 13600 to 13605, inclusive, of the California Probate Code require that the earnings of the decedent, including compensation for unused vacation, not in excess of ~~five thousand dollars (\$5,000)~~ *fifteen thousand dollars (\$15,000)* net, be paid promptly to the affiant or declarant."

(7) "Neither the surviving spouse, nor anyone acting on behalf of the surviving spouse, has a pending request to collect compensation owed by another employer for personal services of the decedent under Sections 13600 to 13605, inclusive, of the California Probate Code."

(8) "Neither the surviving spouse, nor anyone acting on behalf of the surviving spouse, has collected any compensation owed by an employer for personal services of the decedent under Sections 13600 to 13605, inclusive, of the California Probate Code except the sum of _____ dollars (\$_____) which was collected from _____."

(9) "The affiant or declarant requests that he or she be paid the salary or other compensation owed by you for personal services of the decedent, including compensation for unused vacation, not to exceed ~~five thousand dollars (\$5,000)~~ *fifteen thousand dollars (\$15,000)* net, less the amount of _____ dollars (\$_____) which was previously collected."

(10) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(b) Reasonable proof of the identity of the surviving spouse shall be provided to the employer. If a guardian or conservator is acting for the surviving spouse, reasonable proof of the identity of the guardian or conservator shall also be provided to the employer. Proof of identity that is sufficient under Section 13104 is sufficient proof of identity for the purposes of this subdivision.

(c) If a person presenting the affidavit or declaration is a person claiming to be the guardian or conservator of the estate of the surviving spouse, the employer shall be provided with reasonable proof, satisfactory to the employer, of the appointment of the person to act as guardian or conservator of the estate of the surviving spouse.

Section 13602 of the Probate Code should be amended to read:

13602. If the requirements of Section 13600 are satisfied, the employer to whom the affidavit or declaration is presented shall promptly pay the earnings of the decedent, including compensation for unused vacation, not in excess of ~~five thousand dollars (\$5,000)~~ *fifteen thousand dollars (\$15,000)* net, to the person presenting the affidavit or declaration.