4/16/19 9:49 A.M.

Chapter No. 458
19/HR43/R1223SG
CB / CST

HOUSE BILL NO. 1375

Originated in House _____ Clerk

HOUSE BILL NO. 1375

AN ACT TO AMEND SECTION 91-7-93, MISSISSIPPI CODE OF 1972, TO CLARIFY THE REQUIREMENTS AND PROCEDURE FOR CONDUCTING AND FILING AN INVENTORY; TO AMEND SECTION 91-7-95, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR FILING A SUPPLEMENTARY INVENTORY; TO AMEND SECTION 91-7-109, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR EMPLOYING AN APPRAISER; TO AMEND SECTION 91-7-117, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR SETTING APART EXEMPT PROPERTY; TO AMEND SECTION 91-7-135, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR SETTING APART ONE YEAR'S SUPPORT FOR FAMILY; TO AMEND SECTION 91-7-141, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR APPORTIONING ONE YEAR'S ALLOWANCE; TO AMEND SECTION 91-7-255, MISSISSIPPI CODE OF 1972, TO CLARIFY A FIDUCIARY'S POWERS TO NEGOTIATE PAPER; TO AMEND SECTION 91-7-277, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR FILING AN ANNUAL ACCOUNT OF ADMINISTRATION; TO AMEND SECTION 91-7-291, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR FILING A FINAL ACCOUNT OF ADMINISTRATION; TO AMEND SECTION 91-7-297, MISSISSIPPI CODE OF 1972, TO REMOVE REQUIREMENT OF FILING OR PRODUCING LEGAL VOUCHERS FOR FINAL EXAMINATION AND DECREE OF THE COURT; TO INCREASE THE VALUE OF THE ESTATE TO $100,000.00; TO CREATE NEW SECTION 91-7-90, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A STATUTORY ORDER OF ABATEMENT FOR THE SHARES OF DISTRIBUTEES OF THE PROPERTY OF A DECEASED; TO AMEND SECTIONS 91-7-91, 91-7-191, 91-7-195, 91-7-199, 91-7-261 AND 91-7-271, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS; TO AMEND SECTION 91-7-322, MISSISSIPPI CODE OF 1972, TO CLARIFY THE DEFINITION OF SUCCESSOR; TO REPEAL SECTION 91-7-257, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR PROPERTY WHICH SHALL NOT BE REMOVED FROM THE STATE BY AN EXECUTOR OR ADMINISTRATOR; TO REPEAL SECTION 91-7-139, MISSISSIPPI CODE OF 1972, WHICH ALLOWS AN

EXTENSION FOR FILING APPRAISERS' REPORTS AND SANCTIONS; TO REPEAL SECTION 91-7-137, MISSISSIPPI CODE OF 1972, REQUIRING THE FILING OF THE APPRAISERS' REPORTS; TO REPEAL SECTION 91-7-279, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THE FORMAT FOR FILING VOUCHERS WITH THE COURT; TO REPEAL SECTIONS 91-7-111, 91-7-115 AND 91-7-113, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 91-7-93, Mississippi Code of 1972, is amended as follows:

91-7-93. The executor or administrator shall, within ninety (90) days of the grant of his letters unless further time be allowed by the court or clerk, * * * file an inventory, verified by oath, of the money * * * and property owned by the decedent at the time of death, listing it with reasonable detail, and indicating as to each listed item, its market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

There shall be no requirement for filing an inventory if the requirement of filing an inventory is waived in the testator's will. The court or the chancellor may also waive the requirement for filing an inventory in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing an inventory is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file an inventory upon the petition of a beneficiary or other interested party if

the court or the chancellor determines that the filing of inventory is necessary or advisable.

SECTION 2. Section 91-7-95, Mississippi Code of 1972, is amended as follows:

91-7-95. * * * If any property not included in the original inventory comes to the knowledge of the executor or administrator, or if the executor or administrator learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court if the original inventory was filed, or furnish copies thereof or information thereof to persons interested in the new information.

SECTION 3. Section 91-7-109, Mississippi Code of 1972, is amended as follows:

91-7-109. * * * The executor or administrator may employ a qualified and disinterested appraiser to assist him in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items he appraised.

SECTION 4. Section 91-7-117, Mississippi Code of 1972, is amended as follows:

91-7-117. It shall be the duty of the * * * executor or administrator to set apart to the widow and children, or to the widow if there be no children, or to the children if there be no widow, such personal property as is exempt by law from execution * * *. The action of the * * * executor or administrator shall not be necessary to the title of the widow and children to the exempt property, which shall vest in them by operation of law on the death of the husband and father.

SECTION 5. Section 91-7-135, Mississippi Code of 1972, is amended as follows:

91-7-135. It shall be the duty of the * * * court or the chancellor to set apart out of the effects of the decedent, for the spouse and children who were being supported by the decedent, or for the spouse if there be no such children, or for such children if there be no spouse, one (1) year's provision, including such provision as may be embraced in the exempt property set apart. If there be no provisions, or an insufficient amount, the * * * court or the chancellor shall * * * determine the sum necessary for the comfortable support of the spouse and children, or spouse or children, as the case may be, for one (1) year. * * *

SECTION 6. Section 91-7-141, Mississippi Code of 1972, is amended as follows:

91-7-141. The * * * court or the chancellor may apportion the one (1) year's allowance, or any part of it, according to the situation, rights, and interests of any of the children or the widow, and may direct the payment of any portion of the allowance which may be found necessary or proper to any of them.

SECTION 7. Section 91-7-255, Mississippi Code of 1972, is amended as follows:

91-7-255. * * * An executor, administrator, guardian, receiver, or other fiduciary appointed by or acting pursuant to the authority of any chancery court may sell, assign, or transfer any note, bill of exchange, bond, stock certificate, or other negotiable paper belonging to the estate committed or entrusted to him by such court * * * under the standard of care applicable to trustees as set forth in Section 91-8-101 et seq. If the exercise of power concerning the estate is improper, the personal representative is liable to interested persons for damage or loss resulting from breach of his fiduciary duty to the same extent as a trustee of an express trust under the Mississippi Uniform Trust Code.

SECTION 8. Section 91-7-277, Mississippi Code of 1972, is amended as follows:

91-7-277. Every executor or administrator, at least once in each year or oftener if required by the court, shall present under oath an account of his administration, showing the disbursements, every item of which and the amount thereof to be distinctly

stated * * *, and it shall also show the receipts of money and from what sources. The failure to account annually shall be a breach of the administration bond, for which it may be put in suit, or the executor or administrator may be removed; but the court may, on application and on cause shown, extend the time for accounting. * * * The court shall examine all such accounts * * * and if satisfied that the account is just and true, it shall decree the same approved and allowed as a correct annual settlement. * * *

* * *

There shall be no requirement for filing annual accounts if the requirement of filing accountings is waived in the testator's will. The court or the chancellor may also waive the requirement for filing annual accounts in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing annual accounts is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file annual accounts upon the petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of annual accounts is necessary or advisable.

SECTION 9. Section 91-7-291, Mississippi Code of 1972, is amended as follows:

91-7-291. When the estate has been administered by payment of the debts and the collection of the assets, it shall be the duty of the executor or administrator, unless the court or chancellor, on cause shown, shall otherwise order, to make and file a final settlement of the administration by making out and presenting to the court, under oath, his final account, which shall contain a distinct statement of all the balances of the annual accounts, either as debits or credits, all other charges and disbursements * * *, amounts received and not contained in any previous annual account, and a statement of the kind and condition of all assets in his hands. * * * <u>There shall be no requirement for filing a final account if the requirement of filing accountings is waived in the testator's will. The court or the chancellor may also waive the requirement for filing a final account in an intestate estate upon petition to the court by the administrator. Even though the requirement of filing accountings or the final account is waived in the testator's will or waived by the court or the chancellor upon petition to the court by the administrator in an intestate estate, the court or the chancellor may later order the executor or administrator to file a final account upon the timely petition of a beneficiary or other interested party if the court or the chancellor determines that the filing of a final account is necessary or advisable and the petition is timely filed.</u>

SECTION 10. Section 91-7-297, Mississippi Code of 1972, is amended as follows:

91-7-297. If process be returned executed, or publication has been made, the court shall examine the final account so presented and filed, hear the evidence in support of it, and the objections and evidence against it. If the court shall be satisfied that the account is correct * * *, it shall make a final decree of approval and allowance, and shall, at the same time, order the executor or administrator to make distribution of the property in his hands. In proceedings for a final settlement, the court may allow any party interested to surcharge and falsify any annual or partial settlement of the executor or administrator.

SECTION 11. The following shall be codified as Section 91-7-90, Mississippi Code of 1972:

91-7-90. (1) Except as provided in subsection (2) and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority as between real and personal property, in the following order: (a) property not disposed of by the will; (b) residuary bequests and devises; (c) general bequests and devises; (d) specific bequests and devises. For purposes of abatement, a general bequest or devise charged on any specific property or fund is a specific bequest or devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on

which it is charged, a general bequest or devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received, if full distribution of the property had been made in accordance with the terms of the will.

(2) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (1), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(3) If the subject of a preferred bequest or devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

SECTION 12. Section 91-7-91, Mississippi Code of 1972, is amended as follows:

91-7-91. The real property, goods, chattels, personal * * * property, choses in action and money of the deceased, or which may have accrued to his estate after his death from the sale of property, real, personal or otherwise, and the rent of lands accruing during the year of his death, whether he died testate or intestate, shall be assets and shall stand chargeable with all the just debts, funeral expenses of the deceased, and the expenses of settling the estate * * *, without any preference or priority as between real and personal property, and shall abate in the manner

set out in Section 11, House Bill No. 1375, 2019 Regular Session. However, that in cases where no administration has been or shall be commenced on the estate of the decedent within three (3) years after his death, no creditor of the decedent shall be entitled to a lien or any claim whatsoever on any real property of the decedent, or the proceeds therefrom, against purchasers or encumbrancers for value of the heirs of the decedent unless such creditor shall, within three (3) years and ninety (90) days from the date of the death of the decedent, file on the lis pendens docket in the office of the clerk of the chancery court of the county in which * * * the land is located notice of his claim, containing the name of the decedent, a brief statement of the nature, amount and maturity date of his claim and a description of the real property sought to be charged * * * with the claim. The provisions of this section requiring the filing of notice shall not apply to any secured creditor having a recorded lien on * * * the property.

SECTION 13. Section 91-7-191, Mississippi Code of 1972, is amended as follows:

91-7-191. * * * Whenever it shall be necessary for an executor or administrator * * * to sell property to pay the debts and expenses of the estate, he may file a petition in the chancery court for the sale of the land of the deceased, or so much of it as may be necessary, and exhibit to the court a true account of the personal estate and debts due from the deceased, and the

expenses and a description of the land to be sold. Any sale of land shall be subject to the abatement provisions of Section 11, House Bill No. 1375, 2019 Regular Session.

SECTION 14. Section 91-7-195, Mississippi Code of 1972, is amended as follows:

91-7-195. Any creditor of the decedent whose claim against the estate is registered shall have the right to file a petition, as the executor or administrator may, for the sale of land or personal property of the decedent for the payment of debts. The court shall hear and decide upon such petition, and decree as if the application had been made by the executor or administrator, and may order the executor or administrator to make the sale. Any sale of land shall be subject to the abatement provisions of Section 11, House Bill No. 1375, 2019 Regular Session.

SECTION 15. Section 91-7-199, Mississippi Code of 1972, is amended as follows:

91-7-199. The court, after service of summons or proof of publication, shall hear and examine the allegations and evidence in support of the petition and the objections to and evidence against it, if any. If on such hearing the court be satisfied that the * * * land ought to be sold * * * to pay the debts of the descendent and expenses of the estate, it may make a decree for the sale of a part or the whole of the land; and when a part only is decreed to be sold, the decree shall specify what part. If the real estate be so situated that a part cannot be sold without

manifest prejudice to the heirs or devisees, the court may decree that the whole shall be sold; and the overplus arising from such sale, after the payment of debts and expenses, shall be distributed amongst the heirs according to the law of descents, or amongst the devisees according to the will. * * * The sale of the land and distribution of the proceeds of the sale shall be subject to the abatement provisions of Section 11, House Bill No. 1375, 2019 Regular Session.

SECTION 16. Section 91-7-261, Mississippi Code of 1972, is amended as follows:

91-7-261. The executor or administrator shall take proper steps speedily to ascertain whether the estate be solvent or insolvent. If both the real and personal estate be insufficient to pay the debts of the deceased, he shall exhibit to the court a true account of all the personal estate, assets of every description, the land of the deceased, and all the debts due from the deceased; and if it appears to the court that the estate is insolvent, it shall make an order for the sale of all the property. The proceeds of such sale and all other assets shall be equally distributed among all the creditors whose claims shall be duly filed and established, in proportion to the sums due and owing to them respectively, the expenses of the last sickness, the funeral, and the administration, including commissions, being first paid. The sale of the land and distribution of the proceeds of the sale shall be subject to the abatement provisions of

Section 11, House Bill No. 1375, 2019 Regular Session. Before any decree for sale is made, the devisees or heirs shall be made parties to the proceeding.

SECTION 17. Section 91-7-271, Mississippi Code of 1972, is amended as follows:

91-7-271. When the claims are established and the amount of assets ascertained, the court shall adjudge the pro rata share of each creditor, deducting first the preference claims and deducting from debts not due the legal interest from the time of payment up to the time of their maturity; and the executor or administrator shall distribute all money amongst the creditors, in proportion to their demands. The payment of the claims of the creditors shall be subject to the abatement provisions of Section 11, House Bill No. 1375, 2019 Regular Session. A creditor whose pro rata share has been so adjudged, after ten (10) days from the date of the decree ascertaining his share, the same not having been paid, may have execution against the executor or administrator and the sureties on his bond for such sum as may be due him, and costs of execution.

SECTION 18. Section 91-7-322, Mississippi Code of 1972, is amended as follows:

Affidavit of Successor

91-7-322. (1) Except as may be otherwise provided by Sections 81-5-63, 81-12-135, 81-12-137 and 91-7-323, at any time after thirty (30) days from the death of a decedent, any person

indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment when due of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent, as defined herein, upon being presented an affidavit made by the successor stating:

(a) That the value of the entire probate estate of the decedent, wherever located, excluding all liens and encumbrances thereon, does not exceed Fifty Thousand Dollars ($50,000.00);

(b) That at least thirty (30) days have elapsed since the death of the decedent;

(c) That no application or petition for the appointment of a personal representative of the decedent is pending, nor has a personal representative of the decedent been appointed in any jurisdiction; and

(d) The facts of relationship establishing the affiant as a successor of the decedent.

(2) For the purposes of this section, "successor" means * * *:

(a) The decedent's spouse;

(b) If there is no surviving spouse of the decedent, then children of the decedent;

(c) If there is no surviving spouse or children of the decedent, then to descendants per stripes of the decedent;

(d) If there is no surviving spouse, children or descendants per stripes of the decedent, then either parent or any siblings of the decedent; or

(e) If none of the above successors can be found, then to the decedent's heirs at law.

(3) * * * Any minor or incapacitated adult who is a successor of the decedent may be represented by a guardian, natural or appointed, conservator, custodian, or other personal representative, as appointed by the court or by power of attorney.

(4) The representative of a minor or incapacitated adult as defined in subsection (3) shall receive any property or payments from the decedent's estate for the sole use and benefit of said minor or incapacitated adult.

(* * *5) The successor of a decedent, upon complying with the provisions of subsection (1) of this section, shall be empowered to negotiate, transfer ownership and exercise all other incidents of ownership with respect to the personal property and instruments described in subsection (1) of this section.

(* * *6) Any person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to the provisions of subsection (1) of this section shall be discharged and released to the same extent as if such person had dealt with a personal representative of the decedent. Such person shall not be

required to see to the proper application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered, in accordance with the provisions of subsection (1) of this section, refuses to pay, deliver, transfer or issue any personal property or evidence thereof to the successor, such property or evidence thereof may be recovered or its payment, delivery, transfer or issuance compelled upon proof of the successor's right in a proceeding brought in chancery court for such purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made shall be answerable and accountable to the personal representative of the estate, if any, or to any other person having a superior right.

SECTION 19. Section 91-7-137, Mississippi Code of 1972, which requires the filing of the appraisers' reports with the court, is repealed.

SECTION 20. Section 91-7-139, Mississippi Code of 1972, which provides for an extension of time for appraisers to perform their duties and sanctions for failure to file an inventory, is repealed.

SECTION 21. Section 91-7-257, Mississippi Code of 1972, which provides for property which shall not be removed from the state by an executor or administer, is repealed.

SECTION 22. Section 91-7-279, Mississippi Code of 1972, which provides the format for filing vouchers with the court, is repealed.

SECTION 23. Section 91-7-111, Mississippi Code of 1972, which provides for the use of three (3) or more appraisers in each county in which property of the personal estate is located, is repealed.

SECTION 24. Section 91-7-115, Mississippi Code of 1972, which requires an oath be taken by the appointed appraisers and allows vacant appraiser positions to be filled, is repealed.

SECTION 25. Section 91-7-113, Mississippi Code of 1972, which provides a required form of warrant for appraisers, is repealed.

SECTION 26. This act shall take effect and be in force from and after July 1, 2019.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2019

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 28, 2019

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

4/16/2019
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