MISSISSIPPI LEGISLATURE

REGULAR SESSION 2007

By: Senator(s) Doxey

To: Judiciary, Division A

SENATE BILL NO. 2480

AN ACT TO PROVIDE FOR THE PAYMENT OF DELIVERY OF CERTAIN 1 SMALL ESTATES OF A DECEDENT BY AFFIDAVIT; TO AMEND SECTION 2 3 91-7-147, MISSISSIPPI CODE OF 1972, CONCERNING NOTICE TO CREDITORS BY PUBLICATION TO CONFORM; AND FOR RELATED PURPOSES. 4 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI: 6 SECTION 1. (1) Payment or delivery of small estate of decedent upon affidavit. When any person or corporation (a) 7 8 indebted to or holding personal estate of a decedent, (b) 9 controlling the right of access to decedent's safe-deposit box or (c) acting as registrar or transfer agent of any evidence of 10 11 interest, indebtedness, property or right is furnished with a small estate affidavit in substantially the form set forth in 12 13 subsection (2) of this section, that person or corporation shall 14 pay the indebtedness, grant access to the safe-deposit box, 15 deliver the personal estate or transfer or issue the evidence of 16 interest, indebtedness, property or right to persons and in the manner specified in paragraph X of the affidavit set forth in this 17 section or to an agent appointed as hereinafter set forth. 18 (2) Small estate affidavit. The small estate shall be in 19 substantially the following form: 20 _____ (name of affiant) _____, on oath state: 21 "I, _ 22 I. My post office address is: ____ 23 (a) ; 24 My residence address is: _ (b) ; and I understand that, if I am an out-of-state 25 (C) resident, I submit myself to the jurisdiction of Mississippi 26 courts for all matters related to the preparation and use of this 27 28 affidavit. My agent for service of process in Mississippi is: * SS02/ R291* S. B. No. 2480 G1/2 07/SS02/R291 PAGE 1

29	NAME
30	ADDRESS
31	CITY
32	TELEPHONE (IF ANY)
33	I understand that if no person is named above as my agent for
34	service or, if for any reason, service on the named person cannot
35	be effectuated, the Clerk of the Chancery Court of
36	County, Mississippi, is recognized by Mississippi law as my agent
37	for service of process.
38	II.
39	The decedent's name is:
40	III.
41	The date of the decedent's death was, and I have
42	attached a copy of the death certificate hereto.
43	IV.
44	The decedent's place of residence immediately before his
45	death was
46	ν.
47	No letters testamentary or letters of administration are now
48	outstanding on the decedent's estate and no petition for letters
49	is contemplated or pending in Mississippi or in any other
50	jurisdiction, to my knowledge.
51	VI.
52	The gross value of the decedent's entire personal estate,
53	including the value of all property passing to any party either by
54	intestacy or under a will, does not exceed Twenty Thousand Dollars
55	(\$20,000.00). (Here, list each asset, e.g., cash, stock and its
56	fair market value).
57	VII.
58	(Strike either (VII)(a) or (VII(b)).
59	(a) All of the decedent's funeral expenses have been
60	paid; or

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61	(b) The amount of the decedent's unpaid funeral
62	expenses and the name and post office address of each person
63	entitled thereto are as follows:
64	NAME
65	ADDRESS
66	AMOUNT
67	VIII.
68	There is no known unpaid claimant or contested claim against
69	the decedent, except as stated in paragraph (7).
70	IX.
71	(Strike either (IX)(a) or (IX)(b)).
72	(a) The decedent left no will. The names, places of
73	residence and relationships of the decedent's heirs, and the
74	portion of the estate to which each heir is entitled under the law
75	where decedent died intestate are as follows:
76	NAME, RELATIONSHIP AND PLACE OF RESIDENCE:
77	AGE OF MINORS:
78	PORTION OF ESTATE:
79	(b) The decedent left a will, which has been filed with
80	the clerk of an appropriate court. A certified copy of the will
81	on file is attached. To the best of my knowledge and belief the
82	will on file is the decedent's last will and was signed by the
83	decedent and the attesting witnesses as required by law and would
84	be admissible to probate. The names and places of residence of
85	the legatees and the portion of the estate, if any, to which each
86	legatee is entitled are as follows:
87	NAME, RELATIONSHIP AND PLACE OF RESIDENCE:
88	AGE OF MINORS:
89	PORTION OF ESTATE:
90	(c) Affiant is unaware of any dispute or potential
91	conflict as to the heirship or will of the decedent.
92	Χ.

93 The property described in paragraph (6) of this affidavit 94 should be distributed as follows:

95 NAME:

96 SPECIFIC SUM OR PROPERTY TO BE DISTRIBUTED: ___

97 The foregoing statement is made under the penalties of perjury. 98

- 99
- 100

Signature of Affiant Appointment of Agent. If safe deposit access is 101 (3) 102 involved or if sale of any personal property is desirable to 103 facilitate distribution pursuant to the small estate affidavit, all persons named in paragraph (X) of the small estate affidavit, 104 105 excluding minors and unascertained or disabled persons, may in 106 writing appoint one or more persons as their agent for that 107 purpose. The agent shall have power, without court approval, to 108 gain access to, sell and distribute the property for the benefit 109 of all persons named in paragraph (X) of the affidavit; and the payment, delivery, transfer, access or issuance shall be made or 110 111 granted to or on the order of the agent.

112 (4) Release. Upon payment, delivery, transfer, access or 113 issuance pursuant to a properly executed affidavit, the person or 114 corporation is released to the same extent as if the payment, 115 delivery, transfer, access or issuance had been made or granted to 116 the representative of the estate. Such person or corporation is 117 not required to see to the application or disposition of the property; but each person to whom a payment, delivery, transfer, 118 119 access or issuance is made or given is answerable therefor to any 120 person having a prior right and is accountable to any representative of the estate. 121

122 (5) Indemnification. The affiant signing the small estate affidavit prepared pursuant to subsection (2) of this section 123 124 shall indemnify and hold harmless all creditors and heirs of the 125 decedent and other persons relying upon the affidavit who incur * SS02/ R291* S. B. No. 2480

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126 loss because of such reliance. That indemnification shall only be 127 up to the amount lost because of the act or omission of the 128 affiant. Any person recovering under this subsection (5) shall be 129 entitled to reasonable attorney's fees and the expenses of 130 recovery.

131 (6) Nonresident submission to jurisdiction. The affiant of a small estate affidavit who is a nonresident of Mississippi 132 submits himself or herself to the jurisdiction of Mississippi 133 courts for all matters related to the preparation or use of the 134 135 affidavit. The affidavit shall provide the name, address and 136 phone number of a person whom the affiant names as his agent for 137 service of process. If no such person is named or if, for any 138 reason, service on the named person cannot be effectuated, the clerk of the chancery court of the county of which the decedent 139 was a resident at the time of his death shall be the agent for 140 141 service of process.

142 (7) Effective date. Any action properly taken under this
143 section on or after July 1, 2007, is valid regardless of the date
144 of death of the decedent.

145 SECTION 2. Section 91-7-147, Mississippi Code of 1972, is 146 amended as follows:

147 91-7-147. (1) Where the value of an estate shall not be 148 more than Five Thousand Dollars (\$5,000.00), the court shall 149 dispense with newspaper notices; and notices in lieu thereof shall 150 be posted for thirty (30) days at the courthouse door and two (2) 151 other public places in the county. Failure of persons having 152 claims against the estate to have their claims probated and 153 registered by the clerk of the court granting letters within ninety (90) days after the date on which notice is posted will bar 154 155 such claims as provided in Section 91-7-151.

156 (2) Notice to creditors by publication or otherwise is not
 157 required where an estate is paid or delivered under the terms of
 158 Section 1 of Senate Bill No. 2480, 2007 Regular Session.

159 SECTION 3. This act shall take effect and be in force from 160 and after July 1, 2007.