

By: Representative Gunn

To: Judiciary A

HOUSE BILL NO. 159

1 AN ACT TO PROVIDE FOR A STATUTORY ORDER OF ABATEMENT FOR THE
2 SHARES OF DISTRIBUTEES OF THE PROPERTY OF A DECEASED; TO AMEND
3 SECTIONS 91-7-91, 91-7-191, 91-7-195, 91-7-199, 91-7-261 AND
4 91-7-271, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
5 PROVISIONS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** (1) Except as provided in subsection (2) of this
8 section and except as provided in connection with the share of the
9 surviving spouse who elects to take an elective share, shares of
10 distributees abate, without any preference or priority as between
11 real and personal property, in the following order: (a) property
12 not disposed of by the will; (b) residuary devises; (c) general
13 devises; (d) specific devises. For purposes of abatement, a
14 general devise charged on any specific property or fund is a
15 specific devise to the extent of the value of the property on
16 which it is charged, and upon the failure or insufficiency of the
17 property on which it is charged, a general devise to the extent of
18 the failure or insufficiency. Abatement within each
19 classification is in proportion to the amounts of property each of



20 the beneficiaries would have received, if full distribution of the
21 property had been made in accordance with the terms of the will.

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

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

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

34 91-7-91. The goods, chattels, personal estate, choses in
35 action and money of the deceased, or which may have accrued to his
36 estate after his death from the sale of property, real, personal
37 or otherwise, and the rent of lands accruing during the year of
38 his death, whether he died testate or intestate, shall be assets
39 and shall stand chargeable with all the just debts, funeral
40 expenses of the deceased, and the expenses of settling the estate.
41 The lands of the testator or intestate shall also stand chargeable
42 for the debts and such expenses over and above what the personal
43 estate may be sufficient to pay, and may be subjected thereto in
44 the manner * * * directed in this chapter. Any sale of the lands



45 shall be subject to the abatement provisions of Section 1 of this
46 section. * * * However, * * * in cases where no administration
47 has been or shall be commenced on the estate of the decedent
48 within three (3) years after his death, no creditor of the
49 decedent shall be entitled to a lien or any claim whatsoever on
50 any real property of the decedent, or the proceeds therefrom,
51 against purchasers or encumbrancers for value of the heirs of the
52 decedent unless such creditor shall, within three (3) years and
53 ninety (90) days from the date of the death of the decedent, file
54 on the lis pendens docket in the office of the clerk of the
55 chancery court of the county in which * * * the land is located
56 notice of his claim, containing the name of the decedent, a brief
57 statement of the nature, amount and maturity date of his claim and
58 a description of the real property sought to be charged * * * with
59 the claim. The provisions of this section requiring the filing of
60 notice shall not apply to any secured creditor having a recorded
61 lien on * * * the property.

62 **SECTION 3.** Section 91-7-191, Mississippi Code of 1972, is
63 amended as follows:

64 91-7-191. When an executor or administrator * * * discovers
65 that the personal property will not be sufficient to pay the debts
66 and expenses, he may file a petition in the chancery court for the
67 sale of the land of the deceased, or so much of it as may be
68 necessary, and exhibit to the court a true account of the personal
69 estate and debts due from the deceased, and the expenses and a



70 description of the land to be sold. Any sale of land shall be
71 subject to the abatement provisions of Section 1 of this section.

72 **SECTION 4.** Section 91-7-195, Mississippi Code of 1972, is
73 amended as follows:

74 91-7-195. Any creditor of the decedent whose claim against
75 the estate is registered shall have the right to file a petition,
76 as the executor or administrator may, for the sale of land or
77 personal property of the decedent for the payment of debts. The
78 court shall hear and decide upon such petition, and decree as if
79 the application had been made by the executor or administrator,
80 and may order the executor or administrator to make the sale. Any
81 sale of land shall be subject to the abatement provisions of
82 Section 1 of this section.

83 **SECTION 5.** Section 91-7-199, Mississippi Code of 1972, is
84 amended as follows:

85 91-7-199. The court, after service of summons or proof of
86 publication, shall hear and examine the allegations and evidence
87 in support of the petition and the objections to and evidence
88 against it, if any. If on such hearing the court be satisfied
89 that the personal estate is insufficient to pay the debts of the
90 deceased and that the land ought to be sold for that purpose, it
91 may make a decree for the sale of a part or the whole of the land;
92 and when a part only is decreed to be sold, the decree shall
93 specify what part. If the real estate be so situated that a part
94 cannot be sold without manifest prejudice to the heirs or



95 devisees, the court may decree that the whole shall be sold; and
96 the overplus arising from such sale, after the payment of debts
97 and expenses, shall be distributed amongst the heirs according to
98 the law of descents, or amongst the devisees according to the
99 will. The heir or devisee whose lands shall be sold may compel
100 all others holding or claiming under such intestate or testator to
101 contribute in proportion to their respective interests, so as to
102 equalize the burden of the loss. The sale of the land and
103 distribution of the proceeds of the sale shall be subject to the
104 abatement provisions of Section 1 of this section.

105 **SECTION 6.** Section 91-7-261, Mississippi Code of 1972, is
106 amended as follows:

107 91-7-261. The executor or administrator shall take proper
108 steps speedily to ascertain whether the estate be solvent or
109 insolvent. If both the real and personal estate be insufficient
110 to pay the debts of the deceased, he shall exhibit to the court a
111 true account of all the personal estate, assets of every
112 description, the land of the deceased, and all the debts due from
113 the deceased; and if it appears to the court that the estate is
114 insolvent, it shall make an order for the sale of all the
115 property. The proceeds of such sale and all other assets shall be
116 equally distributed among all the creditors whose claims shall be
117 duly filed and established, in proportion to the sums due and
118 owing to them respectively, the expenses of the last sickness, the
119 funeral, and the administration, including commissions, being



120 first paid. The sale of the land and distribution of the proceeds
121 of the sale shall be subject to the abatement provisions of
122 Section 1 of this section. Before any decree for sale is made,
123 the devisees or heirs shall be made parties to the proceeding.

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

126 91-7-271. When the claims are established and the amount of
127 assets ascertained, the court shall adjudge the pro rata share of
128 each creditor, deducting first the preference claims and deducting
129 from debts not due the legal interest from the time of payment up
130 to the time of their maturity; and the executor or administrator
131 shall distribute all money amongst the creditors, in proportion to
132 their demands. The payment of the claims of the creditors shall
133 be subject to the abatement provisions of Section 1 of this
134 section. A creditor whose pro rata share has been so adjudged,
135 after ten (10) days from the date of the decree ascertaining his
136 share, the same not having been paid, may have execution against
137 the executor or administrator and the sureties on his bond for
138 such sum as may be due him, and costs of execution.

139 **SECTION 8.** This act shall take effect and be in force from
140 and after July 1, 2015.

