

By: Representative Roberson

To: Judiciary A

HOUSE BILL NO. 1375
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 91-7-93, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THE REQUIREMENTS AND PROCEDURE FOR CONDUCTING AND FILING
3 AN INVENTORY; TO AMEND SECTION 91-7-95, MISSISSIPPI CODE OF 1972,
4 TO CLARIFY THE PROCEDURE FOR FILING A SUPPLEMENTARY INVENTORY; TO
5 AMEND SECTION 91-7-109, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
6 PROCEDURE FOR EMPLOYING AN APPRAISER; TO AMEND SECTION 91-7-117,
7 MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR SETTING
8 APART EXEMPT PROPERTY; TO AMEND SECTION 91-7-135, MISSISSIPPI CODE
9 OF 1972, TO CLARIFY THE PROCEDURE FOR SETTING APART ONE YEAR'S
10 SUPPORT FOR FAMILY; TO AMEND SECTION 91-7-141, MISSISSIPPI CODE OF
11 1972, TO CLARIFY THE PROCEDURE FOR APPORTIONING ONE YEAR'S
12 ALLOWANCE; TO AMEND SECTION 91-7-255, MISSISSIPPI CODE OF 1972, TO
13 CLARIFY A FIDUCIARY'S POWERS TO NEGOTIATE PAPER; TO AMEND SECTION
14 91-7-277, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR
15 FILING AN ANNUAL ACCOUNT OF ADMINISTRATION; TO AMEND SECTION
16 91-7-291, MISSISSIPPI CODE OF 1972, TO CLARIFY THE PROCEDURE FOR
17 FILING A FINAL ACCOUNT OF ADMINISTRATION; TO AMEND SECTION
18 91-7-297, MISSISSIPPI CODE OF 1972, TO REMOVE REQUIREMENT OF
19 FILING OR PRODUCING LEGAL VOUCHERS FOR FINAL EXAMINATION AND
20 DECREE OF THE COURT; TO INCREASE THE VALUE OF THE ESTATE TO
21 \$100,000.00; TO CREATE NEW SECTION 91-7-90, MISSISSIPPI CODE OF
22 1972, TO PROVIDE FOR A STATUTORY ORDER OF ABATEMENT FOR THE SHARES
23 OF DISTRIBUTEES OF THE PROPERTY OF A DECEASED; TO AMEND SECTIONS
24 91-7-91, 91-7-191, 91-7-195, 91-7-199, 91-7-261 AND 91-7-271,
25 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS;
26 TO AMEND SECTION 91-7-322, MISSISSIPPI CODE OF 1972, TO CLARIFY
27 THE DEFINITION OF SUCCESSOR; TO REPEAL SECTION 91-7-257,
28 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR PROPERTY WHICH SHALL
29 NOT BE REMOVED FROM THE STATE BY AN EXECUTOR OR ADMINISTRATOR; TO
30 REPEAL SECTION 91-7-139, MISSISSIPPI CODE OF 1972, WHICH ALLOWS AN
31 EXTENSION FOR FILING APPRAISERS' REPORTS AND SANCTIONS; TO REPEAL
32 SECTION 91-7-137, MISSISSIPPI CODE OF 1972, REQUIRING THE FILING
33 OF THE APPRAISERS' REPORTS; TO REPEAL SECTION 91-7-279,
34 MISSISSIPPI CODE OF 1972, WHICH PROVIDES THE FORMAT FOR FILING



35 VOUCHERS WITH THE COURT; TO REPEAL SECTIONS 91-7-111, 91-7-115 AND
36 91-7-113, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
37 SECTIONS; AND FOR RELATED PURPOSES.

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

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

41 91-7-93. The executor or administrator shall, within ninety
42 (90) days of the grant of his letters unless further time be
43 allowed by the court or clerk, * * * file an inventory, verified
44 by oath, of the money * * * and property owned by the decedent at
45 the time of death, listing it with reasonable detail, and
46 indicating as to each listed item, its market value as of the date
47 of the decedent's death, and the type and amount of any
48 encumbrance that may exist with reference to any item.

49 There shall be no requirement for filing an inventory if the
50 requirement of filing an inventory is waived in the testator's
51 will. The court or the chancellor may also waive the requirement
52 for filing an inventory in an intestate estate upon petition to
53 the court by the administrator. Even though the requirement of
54 filing an inventory is waived in the testator's will or waived by
55 the court or the chancellor upon petition to the court by the
56 administrator in an intestate estate, the court or the chancellor
57 may later order the executor or administrator to file an inventory
58 upon the petition of a beneficiary or other interested party if
59 the court or the chancellor determines that the filing of
60 inventory is necessary or advisable.



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

63 91-7-95. * * * If any property not included in the original
64 inventory comes to the knowledge of the executor or administrator,
65 or if the executor or administrator learns that the value or
66 description indicated in the original inventory for any item is
67 erroneous or misleading, he shall make a supplementary inventory
68 or appraisal showing the market value as of the date of the
69 decedent's death of the new item or the revised market value or
70 descriptions, and the appraisers or other data relied upon, if
71 any, and file it with the court if the original inventory was
72 filed, or furnish copies thereof or information thereof to persons
73 interested in the new information.

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

76 91-7-109. * * * The executor or administrator may employ a
77 qualified and disinterested appraiser to assist him in
78 ascertaining the fair market value as of the date of the
79 decedent's death of any asset the value of which may be subject to
80 reasonable doubt. Different persons may be employed to appraise
81 different kinds of assets included in the estate. The names and
82 addresses of any appraiser shall be indicated on the inventory
83 with the item or items he appraised.

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



86 91-7-117. It shall be the duty of the * * * executor or
87 administrator to set apart to the widow and children, or to the
88 widow if there be no children, or to the children if there be no
89 widow, such personal property as is exempt by law from
90 execution * * *. The action of the * * * executor or
91 administrator shall not be necessary to the title of the widow and
92 children to the exempt property, which shall vest in them by
93 operation of law on the death of the husband and father.

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

96 91-7-135. It shall be the duty of the * * * court or the
97 chancellor to set apart out of the effects of the decedent, for
98 the spouse and children who were being supported by the decedent,
99 or for the spouse if there be no such children, or for such
100 children if there be no spouse, one (1) year's provision,
101 including such provision as may be embraced in the exempt property
102 set apart. If there be no provisions, or an insufficient amount,
103 the * * * court or the chancellor shall * * * determine the sum
104 necessary for the comfortable support of the spouse and children,
105 or spouse or children, as the case may be, for one (1) year. * * *

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

108 91-7-141. The * * * court or the chancellor may apportion
109 the one (1) year's allowance, or any part of it, according to the
110 situation, rights, and interests of any of the children or the



111 widow, and may direct the payment of any portion of the allowance
112 which may be found necessary or proper to any of them.

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

115 91-7-255. * * * An executor, administrator, guardian,
116 receiver, or other fiduciary appointed by or acting pursuant to
117 the authority of any chancery court may sell, assign, or transfer
118 any note, bill of exchange, bond, stock certificate, or other
119 negotiable paper belonging to the estate committed or entrusted to
120 him by such court * * * under the standard of care applicable to
121 trustees as set forth in Section 91-8-101 et seq. If the exercise
122 of power concerning the estate is improper, the personal
123 representative is liable to interested persons for damage or loss
124 resulting from breach of his fiduciary duty to the same extent as
125 a trustee of an express trust under the Mississippi Uniform Trust
126 Code.

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

129 91-7-277. Every executor or administrator, at least once in
130 each year or oftener if required by the court, shall present under
131 oath an account of his administration, showing the disbursements,
132 every item of which and the amount thereof to be distinctly
133 stated * * *, and it shall also show the receipts of money and
134 from what sources. The failure to account annually shall be a
135 breach of the administration bond, for which it may be put in



136 suit, or the executor or administrator may be removed; but the
137 court may, on application and on cause shown, extend the time for
138 accounting. * * * The court shall examine all such accounts * * *
139 and if satisfied that the account is just and true, it shall
140 decree the same approved and allowed as a correct annual
141 settlement. * * *

142 * * *

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

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

157 91-7-291. When the estate has been administered by payment
158 of the debts and the collection of the assets, it shall be the
159 duty of the executor or administrator, unless the court or
160 chancellor, on cause shown, shall otherwise order, to make and



161 file a final settlement of the administration by making out and
162 presenting to the court, under oath, his final account, which
163 shall contain a distinct statement of all the balances of the
164 annual accounts, either as debits or credits, all other charges
165 and disbursements * * *, amounts received and not contained in any
166 previous annual account, and a statement of the kind and condition
167 of all assets in his hands. * * * There shall be no requirement
168 for filing a final account if the requirement of filing
169 accountings is waived in the testator's will. The court or the
170 chancellor may also waive the requirement for filing a final
171 account in an intestate estate upon petition to the court by the
172 administrator. Even though the requirement of filing accountings
173 or the final account is waived in the testator's will or waived by
174 the court or the chancellor upon petition to the court by the
175 administrator in an intestate estate, the court or the chancellor
176 may later order the executor or administrator to file a final
177 account upon the timely petition of a beneficiary or other
178 interested party if the court or the chancellor determines that
179 the filing of a final account is necessary or advisable and the
180 petition is timely filed.

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

183 91-7-297. If process be returned executed, or publication
184 has been made, the court shall examine the final account so
185 presented and filed, hear the evidence in support of it, and the



186 objections and evidence against it. If the court shall be
187 satisfied that the account is correct * * *, it shall make a final
188 decree of approval and allowance, and shall, at the same time,
189 order the executor or administrator to make distribution of the
190 property in his hands. In proceedings for a final settlement, the
191 court may allow any party interested to surcharge and falsify any
192 annual or partial settlement of the executor or administrator.

193 **SECTION 11.** The following shall be codified as Section
194 91-7-90, Mississippi Code of 1972:

195 91-7-90. (1) Except as provided in subsection (2) and
196 except as provided in connection with the share of the surviving
197 spouse who elects to take an elective share, shares of
198 distributees abate, without any preference or priority as between
199 real and personal property, in the following order: (a) property
200 not disposed of by the will; (b) residuary bequests and devises;
201 (c) general bequests and devises; (d) specific bequests and
202 devises. For purposes of abatement, a general bequest or devise
203 charged on any specific property or fund is a specific bequest or
204 devise to the extent of the value of the property on which it is
205 charged, and upon the failure or insufficiency of the property on
206 which it is charged, a general bequest or devise to the extent of
207 the failure or insufficiency. Abatement within each
208 classification is in proportion to the amounts of property each of
209 the beneficiaries would have received, if full distribution of the
210 property had been made in accordance with the terms of the will.



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

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

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

222 91-7-91. The real property, goods, chattels, personal * * *
223 property, choses in action and money of the deceased, or which may
224 have accrued to his estate after his death from the sale of
225 property, real, personal or otherwise, and the rent of lands
226 accruing during the year of his death, whether he died testate or
227 intestate, shall be assets and shall stand chargeable with all the
228 just debts, funeral expenses of the deceased, and the expenses of
229 settling the estate * * *, without any preference or priority as
230 between real and personal property, and shall abate in the manner
231 set out in Section 11, House Bill No. 1375, 2019 Regular Session.
232 However, that in cases where no administration has been or shall
233 be commenced on the estate of the decedent within three (3) years
234 after his death, no creditor of the decedent shall be entitled to
235 a lien or any claim whatsoever on any real property of the



236 decedent, or the proceeds therefrom, against purchasers or
237 encumbrancers for value of the heirs of the decedent unless such
238 creditor shall, within three (3) years and ninety (90) days from
239 the date of the death of the decedent, file on the lis pendens
240 docket in the office of the clerk of the chancery court of the
241 county in which * * * the land is located notice of his claim,
242 containing the name of the decedent, a brief statement of the
243 nature, amount and maturity date of his claim and a description of
244 the real property sought to be charged * * * with the claim. The
245 provisions of this section requiring the filing of notice shall
246 not apply to any secured creditor having a recorded lien on * * *
247 the property.

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

250 91-7-191. * * * Whenever it shall be necessary for an
251 executor or administrator * * * to sell property to pay the debts
252 and expenses of the estate, he may file a petition in the chancery
253 court for the sale of the land of the deceased, or so much of it
254 as may be necessary, and exhibit to the court a true account of
255 the personal estate and debts due from the deceased, and the
256 expenses and a description of the land to be sold. Any sale of
257 land shall be subject to the abatement provisions of Section 11,
258 House Bill No. 1375, 2019 Regular Session.

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



261 91-7-195. Any creditor of the decedent whose claim against
262 the estate is registered shall have the right to file a petition,
263 as the executor or administrator may, for the sale of land or
264 personal property of the decedent for the payment of debts. The
265 court shall hear and decide upon such petition, and decree as if
266 the application had been made by the executor or administrator,
267 and may order the executor or administrator to make the sale. Any
268 sale of land shall be subject to the abatement provisions of
269 Section 11, House Bill No. 1375, 2019 Regular Session.

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

272 91-7-199. The court, after service of summons or proof of
273 publication, shall hear and examine the allegations and evidence
274 in support of the petition and the objections to and evidence
275 against it, if any. If on such hearing the court be satisfied
276 that the * * * land ought to be sold * * * to pay the debts of the
277 descendent and expenses of the estate, it may make a decree for
278 the sale of a part or the whole of the land; and when a part only
279 is decreed to be sold, the decree shall specify what part. If the
280 real estate be so situated that a part cannot be sold without
281 manifest prejudice to the heirs or devisees, the court may decree
282 that the whole shall be sold; and the overplus arising from such
283 sale, after the payment of debts and expenses, shall be
284 distributed amongst the heirs according to the law of descents, or
285 amongst the devisees according to the will. * * * The sale of the



286 land and distribution of the proceeds of the sale shall be subject
287 to the abatement provisions of Section 11, House Bill No. 1375,
288 2019 Regular Session.

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

291 91-7-261. The executor or administrator shall take proper
292 steps speedily to ascertain whether the estate be solvent or
293 insolvent. If both the real and personal estate be insufficient
294 to pay the debts of the deceased, he shall exhibit to the court a
295 true account of all the personal estate, assets of every
296 description, the land of the deceased, and all the debts due from
297 the deceased; and if it appears to the court that the estate is
298 insolvent, it shall make an order for the sale of all the
299 property. The proceeds of such sale and all other assets shall be
300 equally distributed among all the creditors whose claims shall be
301 duly filed and established, in proportion to the sums due and
302 owing to them respectively, the expenses of the last sickness, the
303 funeral, and the administration, including commissions, being
304 first paid. The sale of the land and distribution of the proceeds
305 of the sale shall be subject to the abatement provisions of
306 Section 11, House Bill No. 1375, 2019 Regular Session. Before any
307 decree for sale is made, the devisees or heirs shall be made
308 parties to the proceeding.

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



311 91-7-271. When the claims are established and the amount of
312 assets ascertained, the court shall adjudge the pro rata share of
313 each creditor, deducting first the preference claims and deducting
314 from debts not due the legal interest from the time of payment up
315 to the time of their maturity; and the executor or administrator
316 shall distribute all money amongst the creditors, in proportion to
317 their demands. The payment of the claims of the creditors shall
318 be subject to the abatement provisions of Section 11, House Bill
319 No. 1375, 2019 Regular Session. A creditor whose pro rata share
320 has been so adjudged, after ten (10) days from the date of the
321 decree ascertaining his share, the same not having been paid, may
322 have execution against the executor or administrator and the
323 sureties on his bond for such sum as may be due him, and costs of
324 execution.

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

327 Affidavit of Successor

328 91-7-322. (1) Except as may be otherwise provided by
329 Sections 81-5-63, 81-12-135, 81-12-137 and 91-7-323, at any time
330 after thirty (30) days from the death of a decedent, any person
331 indebted to the decedent or having possession of tangible personal
332 property or an instrument evidencing a debt, obligation, stock, or
333 chose in action belonging to the decedent shall make payment when
334 due of the indebtedness or deliver the tangible personal property
335 or an instrument evidencing a debt, obligation, stock, or chose in



336 action to a person claiming to be the successor of the decedent,
337 as defined herein, upon being presented an affidavit made by the
338 successor stating:

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

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

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

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

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

352 (a) The decedent's spouse;

353 (b) If there is no surviving spouse of the decedent,
354 then any child of the decedent;

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

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



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

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

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

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

375 (* * * 6) Any person paying, delivering, transferring or
376 issuing personal property or the evidence thereof pursuant to the
377 provisions of subsection (1) of this section shall be discharged
378 and released to the same extent as if such person had dealt with a
379 personal representative of the decedent. Such person shall not be
380 required to see to the proper application of the personal property
381 or evidence thereof or to inquire into the truth of any statement
382 in the affidavit. If any person to whom an affidavit is
383 delivered, in accordance with the provisions of subsection (1) of
384 this section, refuses to pay, deliver, transfer or issue any



385 personal property or evidence thereof to the successor, such
386 property or evidence thereof may be recovered or its payment,
387 delivery, transfer or issuance compelled upon proof of the
388 successor's right in a proceeding brought in chancery court for
389 such purpose by or on behalf of the persons entitled thereto. Any
390 person to whom payment, delivery, transfer or issuance is made
391 shall be answerable and accountable to the personal representative
392 of the estate, if any, or to any other person having a superior
393 right.

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

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

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

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

407 **SECTION 23.** Section 91-7-111, Mississippi Code of 1972,
408 which provides for the use of three (3) or more appraisers in each



409 county in which property of the personal estate is located, is
410 repealed.

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

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

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

