

Senate Amendments to House Bill No. 1375

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

40 91-7-93. The executor or administrator shall, within ninety
41 (90) days of the grant of his letters unless further time be
42 allowed by the court or clerk, * * * file an inventory, verified
43 by oath, of the money * * * and property owned by the decedent at
44 the time of death, listing it with reasonable detail, and
45 indicating as to each listed item, its market value as of the date
46 of the decedent's death, and the type and amount of any
47 encumbrance that may exist with reference to any item.

48 There shall be no requirement for filing an inventory if the
49 requirement of filing an inventory is waived in the testator's
50 will. The court or the chancellor may also waive the requirement
51 for filing an inventory in an intestate estate upon petition to
52 the court by the administrator. Even though the requirement of
53 filing an inventory is waived in the testator's will or waived by
54 the court or the chancellor upon petition to the court by the

55 administrator in an intestate estate, the court or the chancellor
56 may later order the executor or administrator to file an inventory
57 upon the petition of a beneficiary or other interested party if
58 the court or the chancellor determines that the filing of
59 inventory is necessary or advisable.

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

62 91-7-95. * * * If any property not included in the original
63 inventory comes to the knowledge of the executor or administrator,
64 or if the executor or administrator learns that the value or
65 description indicated in the original inventory for any item is
66 erroneous or misleading, he shall make a supplementary inventory
67 or appraisement showing the market value as of the date of the
68 decedent's death of the new item or the revised market value or
69 descriptions, and the appraisers or other data relied upon, if
70 any, and file it with the court if the original inventory was
71 filed, or furnish copies thereof or information thereof to persons
72 interested in the new information.

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

75 91-7-109. * * * The executor or administrator may employ a
76 qualified and disinterested appraiser to assist him in
77 ascertaining the fair market value as of the date of the
78 decedent's death of any asset the value of which may be subject to
79 reasonable doubt. Different persons may be employed to appraise
80 different kinds of assets included in the estate. The names and

81 addresses of any appraiser shall be indicated on the inventory
82 with the item or items he appraised.

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

85 91-7-117. It shall be the duty of the * * * executor or
86 administrator to set apart to the widow and children, or to the
87 widow if there be no children, or to the children if there be no
88 widow, such personal property as is exempt by law from
89 execution * * *. The action of the * * * executor or
90 administrator shall not be necessary to the title of the widow and
91 children to the exempt property, which shall vest in them by
92 operation of law on the death of the husband and father.

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

95 91-7-135. It shall be the duty of the * * * court or the
96 chancellor to set apart out of the effects of the decedent, for
97 the spouse and children who were being supported by the decedent,
98 or for the spouse if there be no such children, or for such
99 children if there be no spouse, one (1) year's provision,
100 including such provision as may be embraced in the exempt property
101 set apart. If there be no provisions, or an insufficient amount,
102 the * * * court or the chancellor shall * * * determine the sum
103 necessary for the comfortable support of the spouse and children,
104 or spouse or children, as the case may be, for one (1) year. * * *

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

107 91-7-141. The * * * court or the chancellor may apportion
108 the one (1) year's allowance, or any part of it, according to the
109 situation, rights, and interests of any of the children or the
110 widow, and may direct the payment of any portion of the allowance
111 which may be found necessary or proper to any of them.

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

114 91-7-255. * * * An executor, administrator, guardian,
115 receiver, or other fiduciary appointed by or acting pursuant to
116 the authority of any chancery court may sell, assign, or transfer
117 any note, bill of exchange, bond, stock certificate, or other
118 negotiable paper belonging to the estate committed or entrusted to
119 him by such court, * * * under the standard of care applicable to
120 trustees as set forth in Section 91-8-101 et seq. If the exercise
121 of power concerning the estate is improper, the personal
122 representative is liable to interested persons for damage or loss
123 resulting from breach of his fiduciary duty to the same extent as
124 a trustee of an express trust under the Mississippi Uniform Trust
125 Code.

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

128 91-7-277. Every executor or administrator, at least once in
129 each year or oftener if required by the court, shall present under
130 oath an account of his administration, showing the disbursements,
131 every item of which and the amount thereof to be distinctly
132 stated * * *, and it shall also show the receipts of money and

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

141 * * *

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

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

156 91-7-291. When the estate has been administered by payment
157 of the debts and the collection of the assets, it shall be the
158 duty of the executor or administrator, unless the court or

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

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

182 91-7-297. If process be returned executed, or publication
183 has been made, the court shall examine the final account so
184 presented and filed, hear the evidence in support of it, and the

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

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

194 91-7-90. (1) Except as provided in subsection (2) and
195 except as provided in connection with the share of the surviving
196 spouse who elects to take an elective share, shares of
197 distributees abate, without any preference or priority as between
198 real and personal property, in the following order: (a) property
199 not disposed of by the will; (b) residuary bequests and devises;
200 (c) general bequests and devises; (d) specific bequests and
201 devises. For purposes of abatement, a general bequest or devise
202 charged on any specific property or fund is a specific bequest or
203 devise to the extent of the value of the property on which it is
204 charged, and upon the failure or insufficiency of the property on
205 which it is charged, a general bequest or devise to the extent of
206 the failure or insufficiency. Abatement within each
207 classification is in proportion to the amounts of property each of
208 the beneficiaries would have received, if full distribution of the
209 property had been made in accordance with the terms of the will.

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

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

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

221 91-7-91. The real property, goods, chattels, personal * * *
222 property, choses in action and money of the deceased, or which may
223 have accrued to his estate after his death from the sale of
224 property, real, personal or otherwise, and the rent of lands
225 accruing during the year of his death, whether he died testate or
226 intestate, shall be assets and shall stand chargeable with all the
227 just debts, funeral expenses of the deceased, and the expenses of
228 settling the estate * * *, without any preference or priority as
229 between real and personal property, and shall abate in the manner
230 set out in Section 11, House Bill No. 1375, 2019 Regular Session.
231 However, that in cases where no administration has been or shall
232 be commenced on the estate of the decedent within three (3) years
233 after his death, no creditor of the decedent shall be entitled to
234 a lien or any claim whatsoever on any real property of the
235 decedent, or the proceeds therefrom, against purchasers or

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

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

249 91-7-191. * * * Whenever it shall be necessary for an
250 executor or administrator * * * to sell property to pay the debts
251 and expenses of the estate, he may file a petition in the chancery
252 court for the sale of the land of the deceased, or so much of it
253 as may be necessary, and exhibit to the court a true account of
254 the personal estate and debts due from the deceased, and the
255 expenses and a description of the land to be sold. Any sale of
256 land shall be subject to the abatement provisions of Section 11,
257 House Bill No. 1375, 2019 Regular Session.

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

260 91-7-195. Any creditor of the decedent whose claim against
261 the estate is registered shall have the right to file a petition,

262 as the executor or administrator may, for the sale of land or
263 personal property of the decedent for the payment of debts. The
264 court shall hear and decide upon such petition, and decree as if
265 the application had been made by the executor or administrator,
266 and may order the executor or administrator to make the sale. Any
267 sale of land shall be subject to the abatement provisions of
268 Section 11, House Bill No. 1375, 2019 Regular Session.

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

271 91-7-199. The court, after service of summons or proof of
272 publication, shall hear and examine the allegations and evidence
273 in support of the petition and the objections to and evidence
274 against it, if any. If on such hearing the court be satisfied
275 that the * * * land ought to be sold * * * to pay the debts of the
276 descendent and expenses of the estate, it may make a decree for
277 the sale of a part or the whole of the land; and when a part only
278 is decreed to be sold, the decree shall specify what part. If the
279 real estate be so situated that a part cannot be sold without
280 manifest prejudice to the heirs or devisees, the court may decree
281 that the whole shall be sold; and the overplus arising from such
282 sale, after the payment of debts and expenses, shall be
283 distributed amongst the heirs according to the law of descents, or
284 amongst the devisees according to the will. * * * The sale of the
285 land and distribution of the proceeds of the sale shall be subject
286 to the abatement provisions of Section 11, House Bill No. 1375,
287 2019 Regular Session.

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

290 91-7-261. The executor or administrator shall take proper
291 steps speedily to ascertain whether the estate be solvent or
292 insolvent. If both the real and personal estate be insufficient
293 to pay the debts of the deceased, he shall exhibit to the court a
294 true account of all the personal estate, assets of every
295 description, the land of the deceased, and all the debts due from
296 the deceased; and if it appears to the court that the estate is
297 insolvent, it shall make an order for the sale of all the
298 property. The proceeds of such sale and all other assets shall be
299 equally distributed among all the creditors whose claims shall be
300 duly filed and established, in proportion to the sums due and
301 owing to them respectively, the expenses of the last sickness, the
302 funeral, and the administration, including commissions, being
303 first paid. The sale of the land and distribution of the proceeds
304 of the sale shall be subject to the abatement provisions of
305 Section 11, House Bill No. 1375, 2019 Regular Session. Before any
306 decree for sale is made, the devisees or heirs shall be made
307 parties to the proceeding.

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

310 91-7-271. When the claims are established and the amount of
311 assets ascertained, the court shall adjudge the pro rata share of
312 each creditor, deducting first the preference claims and deducting
313 from debts not due the legal interest from the time of payment up

314 to the time of their maturity; and the executor or administrator
315 shall distribute all money amongst the creditors, in proportion to
316 their demands. The payment of the claims of the creditors shall
317 be subject to the abatement provisions of Section 11, House Bill
318 No. 1375, 2019 Regular Session. A creditor whose pro rata share
319 has been so adjudged, after ten (10) days from the date of the
320 decree ascertaining his share, the same not having been paid, may
321 have execution against the executor or administrator and the
322 sureties on his bond for such sum as may be due him, and costs of
323 execution.

324 **SECTION 18.** Section 91-7-137, Mississippi Code of 1972,
325 which requires the filing of the appraisers' reports with the
326 court, is repealed.

327 **SECTION 19.** Section 91-7-139, Mississippi Code of 1972,
328 which provides for an extension of time for appraisers to perform
329 their duties and sanctions for failure to file an inventory, is
330 repealed.

331 **SECTION 20.** Section 91-7-257, Mississippi Code of 1972,
332 which provides for property which shall not be removed from the
333 state by an executor or administer, is repealed.

334 **SECTION 21.** Section 91-7-279, Mississippi Code of 1972,
335 which provides the format for filing vouchers with the court, is
336 repealed.

337 **SECTION 22.** Section 91-7-111, Mississippi Code of 1972,
338 which provides for the use of three (3) or more appraisers in each

339 county in which property of the personal estate is located, is
340 repealed.

341 **SECTION 23.** Section 91-7-115, Mississippi Code of 1972,
342 which requires an oath be taken by the appointed appraisers and
343 allows vacant appraiser positions to be filled, is repealed.

344 **SECTION 24.** Section 91-7-113, Mississippi Code of 1972,
345 which provides a required form of warrant for appraisers, is
346 repealed.

347 **SECTION 25.** This act shall take effect and be in force from
348 and after July 1, 2019.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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 REPEAL SECTION 91-7-257, MISSISSIPPI CODE OF 1972, WHICH

27 PROVIDES FOR PROPERTY WHICH SHALL NOT BE REMOVED FROM THE STATE BY
28 AN EXECUTOR OR ADMINISTRATOR; TO REPEAL SECTION 91-7-139,
29 MISSISSIPPI CODE OF 1972, WHICH ALLOWS AN EXTENSION FOR FILING
30 APPRAISERS' REPORTS AND SANCTIONS; TO REPEAL SECTION 91-7-137,
31 MISSISSIPPI CODE OF 1972, REQUIRING THE FILING OF THE APPRAISERS'
32 REPORTS; TO REPEAL SECTION 91-7-279, MISSISSIPPI CODE OF 1972,
33 WHICH PROVIDES THE FORMAT FOR FILING VOUCHERS WITH THE COURT; TO
34 REPEAL SECTIONS 91-7-111, 91-7-115 AND 91-7-113, MISSISSIPPI CODE
35 OF 1972, TO CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED
36 PURPOSES.

SS26\HB1375PS.J

Liz Welch
Secretary of the Senate