MISSISSIPPI LEGISLATURE REGULAR SESSION 2009

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 353

AN ACT TO AMEND SECTION 91-7-322, MISSISSIPPI CODE OF 1972, TO INCREASE THE MAXIMUM VALUE OF A DECEDENT'S ESTATE FOR PURPOSES OF PAYMENT OF DEBTS UPON PRESENTATION OF SUCCESSOR'S AFFIDAVIT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 91-7-322, Mississippi Code of 1972, is amended as follows:

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 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 the decedent's spouse; or, if there is no surviving spouse of the decedent, then the adult with whom any minor children of the decedent are residing; or, if there is no surviving spouse or minor children of the decedent, then any adult child of the decedent; or, if there is no surviving spouse or children of the decedent, then either parent of the decedent.

(3) Any person who is the successor of the decedent, because the person is an adult with whom the minor children of the decedent are living, shall receive any property or payments of or for the decedent for the use and benefit of said children.

(4) 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.

(5) 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 2. This act shall take effect and be in force from and after July 1, 2009.

ST: Estates; increase max. value of decedent's estate for purpose of debt payment upon presentation of successor's affidavit.