

By: Senator(s) Doty, Jackson (11th)

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2850

1 AN ACT TO AMEND SECTIONS 91-1-1, 91-5-35, 91-7-1, 91-7-33,
2 91-17-412 AND 91-17-501, MISSISSIPPI CODE OF 1972, TO ALLOW A WILL
3 TO BE ADMITTED TO PROBATE AS MUNIMENT OF TITLE ONLY BY FILING
4 SIGNED AND SWORN PETITIONS WITHOUT NECESSITY OF ADMINISTRATION; TO
5 AMEND SECTION 91-7-322, MISSISSIPPI CODE OF 1972, TO REVISE THE
6 THRESHOLD UNDER WHICH PAYMENT OF PERSONAL PROPERTY CAN BE MADE
7 UPON AFFIDAVIT OF SUCCESSOR; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 91-1-1, Mississippi Code of 1972, is
10 amended as follows:

11 91-1-1. * * * **Territorial Application.** This chapter applies
12 to the property of decedents domiciled in this state and real
13 property of nonresidents located in this state.

14 **SECTION 2.** Section 91-5-35, Mississippi Code of 1972, is
15 amended as follows:

16 91-5-35. (1) When a person dies testate owning at the time
17 of death real property in the State of Mississippi and his will
18 purports to devise such realty, then said will may be admitted to
19 probate, as a muniment of title only, by petition signed and
20 sworn * * *, without the necessity of administration or the



21 appointment of an executor or administrator with the will annexed,
22 provided it be shown by said petition that:

23 (a) The value of the decedent's * * * probate estate in
24 the State of Mississippi at the time of his or her death,
25 exclusive of any interest in real property and exempt property set
26 forth in Section 91-7-117, did not exceed the sum * * * set forth
27 in Section 91-7-322; and

28 (b) All known debts of the decedent and his estate have
29 been paid, including estate and income taxes, if any.

30 (2) * * * The petition shall be signed and sworn by the
31 personal representative, including (a) an executor, (b) an
32 administrator with the will annexed, or (c) other personal
33 representative serving in a foreign jurisdiction. If there is no
34 such serving executor, administrator with the will annexed, or
35 other personal representative, then it shall be signed and sworn
36 by (i) the spouse of the decedent, if then living, and (ii) the
37 devisees of the Mississippi real property, whether specific or
38 residuary, but excluding persons holding mere contingent remainder
39 interests in the real property.

40 (3) The petition may be signed for and on behalf of the
41 spouse of the decedent, or a beneficiary under the will of the
42 decedent, by a person acting in a representative capacity in
43 accordance with Section 91-8-303.

44 (* * *4) The probate of a will under this section shall in
45 no way affect the rights of any interested party to petition for a



46 formal administration of the estate or to contest the will as
47 provided by Section 91-7-23, Mississippi Code of 1972, or the
48 right of anyone desiring to contest a will presented for probate
49 as provided by Section 91-7-21, or as otherwise provided by law.

50 (* * *5) This section shall apply to wills admitted to
51 probate from and after July 1, * * * 2020, notwithstanding that
52 the testator or testatrix may have died on or before July 1, * * *
53 2020.

54 **SECTION 3.** Section 91-7-1, Mississippi Code of 1972, is
55 amended as follows:

56 91-7-1. Wills shall be proved in and letters testamentary
57 thereon granted by the chancery court of the county in which the
58 testator had a fixed place of residence. If he had no fixed place
59 of residence and land be devised in the will, it shall be proved
60 in and letters granted by the chancery court of the county where
61 the land, or some part thereof, is situated. * * *

62 **SECTION 4.** Section 91-7-33, Mississippi Code of 1972, is
63 amended as follows:

64 91-7-33. Authenticated copies of wills proven according to
65 the laws of any of the states of the union, of the territories, of
66 the District of Columbia, or any foreign country, and affecting or
67 disposing of real property within this state, may be admitted to
68 probate in the proper court. Such will may be contested as the
69 original might have been if it had been executed in this state, or
70 the original will may be proven and admitted to record here.



71 **SECTION 5.** Section 91-17-412, Mississippi Code of 1972, is
72 amended as follows:

73 91-17-412. (a) To the extent that a trustee accounts for
74 receipts from the sale of timber and related products pursuant to
75 this section, the trustee shall allocate the net receipts: * * *
76 first to principal, based upon the volume of the timber at the
77 time of transfer to the trust or decedent's estate. The balance
78 shall be allocated eighty percent (80%) to income and the balance
79 to principal.

80 (b) In determining net receipts to be allocated pursuant to
81 subsection (a), a trustee shall deduct * * *, including, but not
82 limited to, the following expenses related to the sale of timber
83 and related products from gross receipts:

- 84 (1) Management expenses;
85 (2) Legal and accounting expenses and fees;
86 (3) Sales commissions;
87 (4) Reforestation expenses; and
88 (5) Any necessary timber stand improvement expense that
89 is recognized and accepted as good forest management practice at
90 the time of sale.

91 (c) This chapter applies whether or not a decedent or
92 transferor was harvesting timber from the property before it
93 became subject to the trust.

94 (d) If a trust owns an interest in timberland on January 1,
95 2013, the trustee may allocate net receipts from the sale of



96 timber and related products as provided in this chapter or in the
97 manner used by the trustee before January 1, 2013. If the trust
98 acquires an interest in timberland after January 1, 2013, the
99 trustee shall allocate net receipts from the sale of timber and
100 related products as provided in this chapter.

101 **SECTION 6.** Section 91-17-501, Mississippi Code of 1972, is
102 amended as follows:

103 91-17-501. A trustee shall make the following disbursements
104 from income to the extent that they are not disbursements to which
105 Section 91-17-201(2) (B) or (C) applies:

106 (1) One-half (1/2) of the regular compensation of the
107 trustee and of any person providing investment advisory or
108 custodial services to the trustee;

109 (2) One-half (1/2) of all expenses for accountings,
110 judicial proceedings, or other matters that involve both the
111 income and remainder interests;

112 (3) All of the other ordinary expenses incurred in
113 connection with the administration, management, or preservation of
114 trust property and the distribution of income, including interest,
115 ordinary repairs, regularly recurring taxes assessed against
116 principal, and expenses of a proceeding or other matter that
117 concerns primarily the income interest; and

118 (4) Recurring premiums on insurance covering the loss
119 of a principal asset or the loss of income from or use of the
120 asset.



121 With regard to subsections (1) and (2) of this section, a
122 trustee may allocate more or less if income or principal is
123 insufficient to satisfy this allocation during the year.

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

126 91-7-322. (1) Except as may be otherwise provided by
127 Sections 81-5-63, 81-12-135, 81-12-137 and 91-7-323, at any time
128 after thirty (30) days from the death of a decedent, any person
129 indebted to the decedent or having possession of tangible personal
130 property or an instrument evidencing a debt, obligation, stock, or
131 chose in action belonging to the decedent shall make payment when
132 due of the indebtedness or deliver the tangible personal property
133 or an instrument evidencing a debt, obligation, stock, or chose in
134 action to a person claiming to be the successor of the decedent,
135 as defined herein, or in a manner as directed by the successor,
136 upon being presented an affidavit made by the successor stating:

137 (a) That the value of the entire probate estate of the
138 decedent, wherever located, excluding all liens and encumbrances
139 thereon, does not exceed * * * Seventy-five Thousand Dollars
140 (\$75,000.00);

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

143 (c) That no application or petition for the appointment
144 of a personal representative of the decedent is pending, nor has a



145 personal representative of the decedent been appointed in any
146 jurisdiction; * * *

147 (d) The facts of relationship establishing the affiant
148 as a successor of the decedent * * *;

149 (e) Directing the manner of distribution of the debt or
150 property; and

151 (f) Acknowledging the successor's obligation to
152 distribute the debt or property to those having a superior right
153 to same.

154 (2) For the purposes of this section, "successor" means:

155 (a) The decedent's spouse;

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

158 (c) If there is no surviving spouse or children of the
159 decedent, then to * * * any grandchild of the decedent; or

160 (d) If there is no surviving spouse, children or * * *
161 grandchildren of the decedent, then either parent or any siblings
162 of the decedent * * *.

163 * * *

164 (3) Any minor or incapacitated adult who is a successor of
165 the decedent may be represented by a guardian, natural or
166 appointed, conservator, custodian, or other personal
167 representative, as appointed by the court or by power of attorney.

168 (4) Except as otherwise provided in Sections 93-20-209 and
169 93-20-431, the representative of a minor or incapacitated adult as



170 defined in subsection (3) of this section shall receive any
171 property or payments from the decedent's estate for the sole use
172 and benefit of said minor or incapacitated adult.

173 (5) The successor of a decedent, upon complying with the
174 provisions of subsection (1) of this section, shall be empowered
175 to negotiate, transfer ownership and exercise all other incidents
176 of ownership with respect to the personal property and instruments
177 described in subsection (1) of this section.

178 (6) Any person paying, delivering, transferring or issuing
179 personal property or the evidence thereof pursuant to the
180 provisions of subsection (1) of this section shall be discharged
181 and released to the same extent as if such person had dealt with a
182 personal representative of the decedent. Such person shall not be
183 required to see to the proper application of the personal property
184 or evidence thereof or to inquire into the truth of any statement
185 in the affidavit. If any person to whom an affidavit is
186 delivered, in accordance with the provisions of subsection (1) of
187 this section, refuses to pay, deliver, transfer or issue any
188 personal property or evidence thereof to the successor, such
189 property or evidence thereof may be recovered or its payment,
190 delivery, transfer or issuance compelled upon proof of the
191 successor's right in a proceeding brought in chancery court for
192 such purpose by or on behalf of the persons entitled thereto. Any
193 person to whom payment, delivery, transfer or issuance is made
194 shall be answerable and accountable to the personal representative



195 of the estate, if any, or to any other person having a superior
196 right.

197 **SECTION 8.** This act shall take effect and be in force from
198 and after July 1, 2020.

