

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Riable**

A Bill

ACT 687 OF 1993
HOUSE BILL 1144

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE §28-41-101 TO ENSURE REAL
9 PROPERTY MAY BE INCLUDED UNDER THE LAW FOR THE COLLECTION
10 OF SMALL ESTATES AND TO AUTHORIZE A NOTICE TO CREDITORS OF
11 THE DECEDENT_S REAL PROPERTY; TO AMEND ARKANSAS CODE §28-
12 41-102 TO PROVIDE, WHEN NOTICE IS GIVEN, CLAIMS AGAINST
13 DECEDENT_S REAL PROPERTY MAY BE BARRED AND TO AUTHORIZE
14 THE DISTRIBUTEES OF SMALL ESTATES TO ISSUE DEEDS; AND FOR
15 OTHER PURPOSES."

Subtitle

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18 "AN ACT TO ENSURE REAL PROPERTY MAY BE INCLUDED UNDER THE
19 LAW FOR THE COLLECTION OF SMALL ESTATES AND TO AUTHORIZE
20 NOTICE TO CREDITORS AND THE ISSUANCE OF DEEDS."

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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24 SECTION 1. Arkansas Code §28-41-101 is hereby amended to read as
25 follows:

26 "28-41-101. Collection of small estates by distributee.

27 (a) The distributee of an estate shall be entitled thereto without the
28 appointment of a personal representative when:

29 (1) No petition for the appointment of a personal representative
30 is pending or has been granted; and

31 (2) Forty-five (45) days have elapsed since the death of the
32 decedent; and

33 (3) The value, less encumbrances, of all property owned by the
34 decedent at the time of death, excluding the homestead of and the statutory
35 allowances for the benefit of a spouse or minor children, if any, of the
36 decedent, does not exceed fifty thousand dollars (\$50,000); and

1 (4) There shall be filed with the clerk of the probate court of
2 the county of proper venue for administration an affidavit of one (1) or more
3 of the distributee setting forth:

4 (A) That there are no unpaid claims or demands against the
5 decedent or his estate; and

6 (B) An itemized description and valuation of the personal
7 property and a legal description and valuation of any real property of the
8 decedent, including the homestead; and

9 (C) The names and addresses of persons having possession of
10 the personal property and the names and addresses of any persons possessing or
11 residing on any real property of the decedent; and

12 (D) The names, addresses, and relationship to the decedent
13 of the persons entitled to and who will receive the property; and

14 (5) There is furnished to any person owing any money, having
15 custody of any property, or acting as registrar or transfer agent of any
16 evidence of interest, indebtedness, property, or right, a copy of the
17 affidavit certified by the clerk.

18 (b)(1) The clerk shall file the affidavit, assign it a number, and
19 index it as required by § 28-1-108(1). He shall make a charge of ten dollars
20 (\$10.00) for filing the affidavit and three dollars (\$3.00) for each certified
21 copy. No order of the court or other proceeding shall be necessary.

22 (2) If an estate collected under this section contains any real
23 property, the distributee, in order to allow for claims against the estate to
24 be presented, may, promptly after the affidavit has been filed, cause a notice
25 of decedent_s death and the filing of an affidavit for collecting of his or
26 her estate to be published. The notice shall contain the name of the
27 decedent, his or her last known address, the date of death, a statement that
28 the affidavit was filed, the date of the filing, a legal description of all
29 real property listed in the affidavit, a statement requiring all persons
30 having claims against the estate to exhibit them, properly verified, within
31 six (6) months from the date of the first publication of the notice, or they
32 shall be forever barred and precluded from any benefit in the estate, the name
33 and mailing address of the distributee or their attorney, and the date the
34 notice was first published. Publication of the notice shall be as provided in
35 §§28-1-112(b)(4) and 28-40-111(a)(4)."

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SECTION 2. Arkansas Code § 28-41-102 is hereby amended to read as follows:

"28-41-102. Payment, transfers, or deliveries pursuant to affidavit.

(a) The person making payment, transfer, or delivery pursuant to the affidavit described in § 28-41-101 shall be released to the same extent as if made to a personal representative of the decedent, and he shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit.

(b)(1) The distributee to whom payment, transfer, or delivery is made, as trustees, shall be answerable to any person having a prior right and shall be accountable to any personal representative thereafter appointed.

(2) However, if notice to creditors of the decedent's death and the collection of his or her estate is published as provided by §28-41-101, all claims as to real property within the estate shall, in any event, be forever barred at the end of six (6) months after the date of the first publication of the first notice.

(3) Nothing in this section shall affect or prevent any action or proceeding to enforce any mortgage, pledge, or other lien arising under contract or statute upon the property of the estate.

(c) If the person to whom the affidavit is delivered refuses to pay, transfer, or deliver the property as above provided, it may be recovered or delivery compelled in an action brought in a court of competent jurisdiction for such purpose by or in behalf of the distributee entitled to the property upon proof of the facts required to be stated in the affidavit.

(d) Under and pursuant to the affidavit described in §28-41-101 and after the notice to creditors of the decedent's death and the collection of his or her estate is published as provided by §28-41-101, the distributee(s) to whom transfer or delivery of any real property is made shall be authorized to issue to himself or themselves a deed of distribution for the real property of the decedent as if made by a personal representative of the decedent."

SECTION 3. All provisions of this act of general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

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SECTION 4. If any provisions of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

SECTION 5. All laws and parts of laws in conflict with this act are hereby repealed.

/s/Rep. Riable

APPROVED: 3/24/93

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