

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

492

By: Senator Dowd

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE ANNOTATED §28-40-111, TO CONFORM CERTAIN PROVISIONS THEREOF TO SECTIONS 3 (a) AND (c) OF ACT 1007 OF 1985, ARKANSAS CODE ANNOTATED §28-50-101; TO AMEND ARKANSAS CODE ANNOTATED §28-50-101, TO CHANGE THE THREE (3) MONTH PERIOD TO SIX (6) MONTHS; AND FOR OTHER PURPOSES."

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

SECTION 2. Arkansas Code Annotated §28-40-111, is hereby amended to read as follows:

"28-40-111. (a) (1) Promptly after the letters have been granted on the estate of a deceased person, the personal representative shall cause a notice of his appointment to be published, stating the date of his appointment, and requiring all persons having claims against the estate to exhibit them, properly verified to him, within six (6) months from the date of the first publication of the notice, or they shall be forever barred and precluded from any benefit in such estate.

(2) The notice shall state the mailing address of the personal representative.

(3) If a will of the decedent has been probated, the notice shall also state the date of admission of the will to probate and that a contest of the order of probate can be effected only by filing a petition within the time provided by law.

(4) Within one (1) month after the first publication of the notice, a copy of the notice shall also be served upon each heir and devisee whose name and address are known and upon all unpaid creditors whose names, status as creditors, and addresses are known to or reasonably ascertainable by the personal representative in accordance with Sections 28-1-112 (b) (1), (2) or (3). The burden of proof on any issue as to whether a creditor was known to

or reasonably ascertainable by the personal representative shall be upon the creditor claiming entitlement to such actual notice.

(b) When a will is to be probated without an administration of the estate, the notice shall be published by the proponents of the will and shall state the mailing address of each of the one (1) or more proponents and the name and address of the attorney for the proponents.

(c) The notice shall be in substantially the following form:

In the Probate Court of .....County, Arkansas  
In the Matter of the Estate of ....., Deceased. No. ....  
Last known address .....  
Date of death .....

(1) (To be used where no will.)

The undersigned was appointed administrator of the estate of the above decedent on the ..... day of ....., 19....

(2) (To be used when a will is probated and a personal representative appointed.)

An instrument dated ..... was on the ..... day of ....., 19 ....., admitted to probate as the last will of the above named decedent and the undersigned has been appointed executor (or administrator) thereunder. A contest of the probate of the will can be effected only by filing a petition within the time provided by law.

(3) (To be used in either case.)

All persons having claims against the estate must exhibit them, duly verified, to the undersigned within six (6) months from the date of the first publication of this notice, or they shall be forever barred and precluded from any benefit in the estate.

(4) (To be used when a will is probated but no personal representative appointed.)

An instrument dated ..... was on the ..... day of ....., 19 ....., admitted to probate as the last will of the above named decedent. A contest of the probate of the will can be effected only by filing within the time provided by law a petition for an order revoking or modifying the order admitting the will to probate, and delivering a copy of such petition to the undersigned

proponent(s) or the undersigned attorney for the proponent(s) at his (their) address hereunder shown.

This notice first published ....., 19 .....

.....

(Administrator or Executor)

.....

(Mail Address)

(d) (1) Publication of the notice shall be as provided in §28-1-112

(b) (4) unless the value of the estate to be administered upon does not exceed one thousand dollars (\$1,000), exclusive of homestead, in which event publication may be given by posting notice in the courthouse at a conspicuous place near a principal entrance for a period of three (3) weeks.

(2) In addition, the court may by general rule, or by special order in a particular case, require that notice shall be given by ordinary mail to all persons whose names and addresses appear in the petition."

SECTION 2. Arkansas Code §28-50-101 is hereby amended to read as follows:4

"(a) Statute of nonclaim. Except as provided in §§28-50-102 and 28-50-110, all claims against a decedent's estate, other than expenses of administration and claims of the United States which, under valid laws of the United States, are not barrable by a statute of nonclaim, but include claims of a state or territory of the United States and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, shall be forever barred as against the estate, the personal representative, or the heirs and devisees of the decedent, unless verified to the personal representative or filed with the court within six (6) months after the date of the first publication of notice to creditors.

(b) State of limitations. No claim shall be allowed which was barred by any statute of limitations at the time of the decedent's death.

(c) When statute of nonclaim not affected by statute of limitations. No claim shall be barred by the statute of limitations which was not barred thereby at the time of the decedent's death, if the claim shall be presented to the personal representative or filed with the court within six (6) months

after the date of the first publication of notice to creditors.

(d) Claims barred when no administration commenced or no notice published. All claims barrable under the provision of subsection (a) shall, in any event, be barred at the end of five (5) years after the date of the death of the decedent, unless within this period letters have been issued and notice to creditors published as provided by §28-40-111.

(e) Liens not affected. 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.

(f) Certain tort claims not affected. Notwithstanding the foregoing provisions relating to the time for filing claims against an estate, or any other provisions of this code, a tort claim or tort action against the estate of a deceased tortfeasor, to the extent of any recovery which will be satisfied from liability insurance or from uninsured motorist insurance coverage and which will not use, consume, or deplete any assets of the decedent's estate, may be brought within the limitation period otherwise provided for the tort action. No recovery against the tortfeasor's estate shall use, consume, diminish, or deplete the assets of the decedent's estate, and any recovery shall not affect the distribution of the assets of the estate to the heirs, next of kin, legatees, or devisees of the deceased tortfeasor unless a claim is filed in the manner and within the time provided by this code for filing claims against the estate.

(g) Extension of limitation in certain cases. Notwithstanding the foregoing provision relating to the time for filing claims against an estate, or any other provisions of this code, a creditor of an estate who receives service of notice from the personal representative in accordance with §28-40-111 (a) (4), within thirty (30) days of the expiration of the nonclaim period, shall have an additional thirty (30) days after expiration of the six (6) month limitation in which to present or file its claim."

SECTION 3. All provisions of this Act of a 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.

SECTION 4. All laws and parts of laws in conflict with this Act are hereby repealed.