

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

495

By: Senator Dowd

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE ANNOTATED §28-41-101, TO DECREASE TO \$25,000 THE VALUE OF SMALL ESTATES THAT MAY BE DISTRIBUTED WITHOUT THE APPOINTMENT OF A PERSONAL REPRESENTATIVE UNDER THE ARKANSAS PROBATE CODE; TO LIMIT THE APPLICATION OF THE STATUTE TO PERSONAL PROPERTY; TO AMEND ARKANSAS CODE ANNOTATED §28-41-103, TO PROVIDE FOR PROBATE OF WILLS AND DETERMINATION OF HEIRS WITHOUT ESTATE ADMINISTRATION; TO REPEAL ARKANSAS CODE ANNOTATED §28-41-104; AND FOR OTHER PURPOSES."

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

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

"28-41-101. (a) The distributees of the personal property of an estate shall be entitled thereto without the appointment of a personal representative when:

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

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

(3) The value, less encumbrances, of all personal property owned by the decedent at the time of death, excluding the homestead of and the statutory allowances for the benefit of a spouse or minor children, if any, of the decedent, does not exceed twenty-five thousand dollars (\$25,000).

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

(A) That the decedent left no will or that his will has been admitted to probate; and

(B) That there are no unpaid claims or demands against the decedent or his estate, and

(C) An itemized description and valuation of the personal property of the decedent, including the homestead, and

(D) The names and addresses of persons having possession of the property, and

(E) The names, addresses and relationship to the decedent of the persons entitled to and who will receive the property, and

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

(b) The clerk shall file such affidavit, assign it a number and index it as required by Section 28-1-108 (1). He shall make a charge of one dollar (\$1.00) for filing the affidavit, ten cents (10\_) for indexing it and twenty-five cents (25\_) for each certified copy thereof. No order of the court or other proceeding shall be necessary."

SECTION 2. Arkansas Code §28-41-103 is hereby amended to read as follows:

"(a) Upon the petition of an interested person, the Court may enter an Order dispensing with administration in a decedent's estate, provided the Court finds there there are no assets requiring administration by a personal representative, either because the decedent's personal property does not exceed the value which may be collected and distributed by affidavit, pursuant to Arkansas Code Annotated §28-41-101, or because the only assets owned by the decedent at death consisted of real estate having devolved to the decedent's heirs or devisees at death, or both. If the decedent died testate, the petition may ask for probate of the decedent's will, without the appointment of a personal representative or administration of the estate, for purposes of establishing the title to the decedent's devisees in such real estate, and if the decedent died intestate, the petition may ask that the heirs of the decedent be ascertained and the interests of the heirs in such real estate determined, in accordance with the procedures set forth in Arkansas Code Annotated §28-53-101 for the determination of heirship.

(b) Notice of hearing on the petition shall be given to those persons

and in the manner otherwise prescribed under this Probate Code for a petition to probate a will or for a determination of heirship. In addition, notice of the probate of the will shall be given in accordance with Arkansas Code Annotated §28-40-111 (c)(4) and notice of the determination of the heirs of the decedent shall be given in accordance with Arkansas Code Annotated §28-53-101, to those persons entitled thereto.

(c) The effect and finality of the order shall be the same as now prescribed under Arkansas Code Annotated §28-40-121, in the case of an order admitting the decedent's will to probate, and as now prescribed under Arkansas Code Annotated §28-53-101, in the case of an order determining the heirs of the decedent."

SECTION 3. Arkansas Code §28-41-104 is hereby repealed.

SECTION 4. 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 5. All laws and parts of laws in conflict with this Act are hereby repealed.