

SECOND REGULAR SESSION

SENATE BILL NO. 840

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Pre-filed January 5, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4887S.011

AN ACT

To repeal sections 473.097 and 473.100, RSMo, and to enact in lieu thereof two new sections relating to the administration of small probate estates.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 473.097 and 473.100, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 473.097 and 473.100, to
3 read as follows:

473.097. 1. Distributees of an estate which consists of personal property
2 or real property or both personal and real property have a defeasible right to the
3 personal property, and are entitled to the real property of such estate, as provided
4 in this section, without awaiting the granting of letters testamentary or of
5 administration, if all of the following conditions are met:

6 (1) The value of the entire estate, less liens, debt, and encumbrances, does
7 not exceed **[forty] one hundred** thousand dollars;

8 (2) Thirty days have elapsed since the death of the decedent and no
9 application for letters or for administration or for refusal of letters under section
10 473.090 is pending or has been granted, or if such refusal has been granted and
11 subsequently revoked;

12 (3) A bond, in an amount not less than the value of the personal property,
13 approved by the judge or clerk of the probate division is filed by the person
14 making the required affidavit, **except that the court may dispense with the**
15 **filing of a bond, for good cause shown, including but not limited to if**
16 **it finds the same is not necessary because:**

17 (a) **The value of the entire estate, less liens, debts, and**
18 **encumbrances, does not exceed fifteen thousand dollars;**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 **(b) All distributees have waived the filing of a bond and proof**
20 **has been submitted that the funeral bill has been paid;**

21 **(c) A waiver of bond has been filed for the funeral claim or;**

22 **(d) The funeral claim is prohibited by section 473.444.**

23 **The bond shall be** conditioned upon the payment of the debts of the decedent,
24 including any debts to the state of Missouri, the expenses of funeral and burial
25 and compliance with future orders of the court in relation to the estate of the
26 decedent; and further conditioned that any part of the property to which the
27 distributee is not entitled will be delivered to the persons entitled to the property
28 under the law. Liability of the sureties on the bonds provided for in this section
29 terminates unless proceedings against them are instituted within two years after
30 the bond is filed[; except that, the court may dispense with the filing of a bond
31 if it finds that the same is not necessary];

32 (4) A fee, in the amount prescribed in subsection 1 of section 483.580, and
33 when required, the publication cost of the notice to creditors are paid or the proof
34 of payment for such publication is provided to the clerk of the probate division.

35 2. Notwithstanding the limitation periods set out in section 473.050, the
36 affidavit required by this section may be made by the person designated as
37 personal representative under the will of the decedent, if a will has been
38 presented for probate within the limitation periods specified in section 473.050,
39 otherwise by any distributee entitled to receive property of the decedent any time
40 after thirty days after decedent's death, and shall set forth all of the following:

41 (1) That the decedent left no will or, if the decedent left a will, that the
42 will was presented for probate within the limitation periods specified in section
43 473.050;

44 (2) That all unpaid debts, claims or demands against the decedent or the
45 decedent's estate and all estate taxes due, if any, on the property transfers
46 involved have been or will be paid, except that any liability by the affiant for the
47 payment of unpaid claims or demands shall be limited to the value of the
48 property received;

49 (3) An itemized description and valuation of property of the decedent. As
50 used in this subdivision, the phrase "property of the decedent" shall not include
51 property which was held by the decedent as a tenant by the entirety or a joint
52 tenant at the time of the decedent's death;

53 (4) The names and addresses of persons having possession of the property;

54 (5) The names, addresses and relationship to the decedent of the persons

55 entitled to and who will receive, the specific items of property, **and their**
56 **respective interest therein**, remaining after payment of claims and debts of
57 the decedent, included in the affidavit;

58 (6) The facts establishing the right to such specific items of property as
59 prescribed by this section. The certificate of the clerk shall be annexed to or
60 endorsed on the affidavit and shall show the names and addresses of the persons
61 entitled to the described property under the facts stated in the affidavit and shall
62 recite that the will of decedent has been probated or that no will has been
63 presented to the court and that all estate taxes on the property, if any are due,
64 have been **or will be** paid.

65 3. A copy of the affidavit and certificate shall be filed in the office of the
66 clerk of the probate division and copies of the affidavit and certificate shall be
67 furnished by the clerk.

68 4. The distributees mentioned in this section may establish their right to
69 succeed to the real estate of the decedent by filing a copy of the foregoing affidavit
70 and certificate of the clerk in the office of the recorder of deeds of each county
71 where the real property is situated.

72 5. When the **gross** value of the property, **less liens, encumbrances,**
73 **and debts**, listed in the affidavit is more than fifteen thousand dollars, the clerk
74 shall cause to be published in a newspaper of general circulation within the
75 county which qualifies under chapter 493 a notice to **all persons interested in**
76 **the estate and to** creditors of the decedent **whose claims have not been**
77 **prohibited by section 473.444** to file their claims in the court or be forever
78 barred. The notice shall be published once a week for two consecutive
79 weeks. Proof of publication of notice pursuant to this section shall be filed not
80 later than ten days after completion of the publication. The notice shall be in
81 substantially the following form:

82 To all persons interested in the estate of, Decedent:

83 On the day of, 20..., a small estate affidavit was
84 filed by the distributees for the decedent under section 473.097, RSMo, with the
85 probate division of the circuit court of County, Missouri.

86 All creditors of the decedent, who died on, 20..., are notified that
87 section 473.444 sets a limitation period that would bar claims one year after the
88 death of the decedent. A creditor may request that this estate be opened for
89 administration.

90 Receipt of this notice should not be construed by the recipient to indicate

91 that the recipient may possibly have a beneficial interest in the estate. The
92 nature and extent of any person's interest, if any, may possibly be determined
93 from the affidavit on this estate filed in the probate division of the circuit court
94 of County, Missouri.

95 Date of first publication is, 20...
96
97 Clerk of the Probate Division
98 of the Circuit Court
99 County, Missouri

100 **6. When the gross value of the property, less liens and**
101 **encumbrances, listed in the affidavit is more than fifteen thousand**
102 **dollars, the certificate of the clerk shall not be issued unless a licensed**
103 **attorney has entered an appearance on behalf of the affiant.**

104 7. Upon compliance with the procedure required by this section, the
105 personal property and real estate involved shall not thereafter be taken in
106 execution for any debts or claims against the decedent, but such compliance has
107 the same effect in establishing the right of distributees to succeed to the property
108 as if complete administration was had; but nothing in this section affects the
109 right of secured creditors with respect to such property.

110 [7.] 8. The affiant shall collect the property of decedent described in the
111 affidavit. The property of decedent shall be liquidated by the affiant to the extent
112 necessary to pay debts of decedent. If the decedent's property is not sufficient to
113 pay such debts, abatement of the shares of the distributees shall occur in
114 accordance with section 473.620. The affiant shall distribute the remaining
115 property to such persons identified in the affidavit as required in subdivision (5)
116 of subsection 2 of this section who are entitled to receive the specific items of
117 personal property, as described in the affidavit, or to have any evidence of such
118 property transferred to such persons. To the extent necessary to facilitate
119 distribution, the affiant may liquidate all or part of decedent's property.

473.100. The person **or entity** making payment, delivery, transfer or
2 issuance of personal property or evidence thereof pursuant to the affidavit
3 prescribed in section 473.097 is discharged and released to the same extent as if
4 made to an executor or administrator of the decedent, and [he] **the person or**
5 **entity** is not required to see to the application thereof or to inquire into the truth
6 of any statement in the affidavit if made by any other person. If any person **or**
7 **entity** to whom the affidavit is delivered refuses to pay, deliver, transfer, or issue

8 any personal property or evidence thereof, it may be recovered or its payment,
9 delivery, transfer, or issuance compelled in an action brought for that purpose by
10 or on behalf of the persons entitled thereto under section 473.097, upon proof of
11 the defeasible right declared by such section. Any person **or entity** to whom
12 payment, delivery, transfer or issuance is made is answerable and accountable
13 therefor to any administrator or executor of the estate or to the surviving spouse
14 or minor children of the decedent who proceed under section 473.090 or 473.093
15 or to any other person **or entity** having a superior right.

Unofficial

Bill

Copy