

SECOND REGULAR SESSION

# HOUSE BILL NO. 1537

91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CLAYTON.

Read 1<sup>st</sup> time January 17, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2451L.011

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## AN ACT

To repeal section 473.097, RSMo, relating to administration of small estates, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 473.097, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 473.097, to read as follows:

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

(1) The value of the entire estate, less liens, **debt**, and encumbrances, does not exceed forty thousand dollars;

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

(3) A bond, in an amount not less than the value of the personal property, approved by the judge or clerk of the probate division is filed by the person making the [herein] required affidavit conditioned upon the payment of the debts of the decedent, including any debts to the state of Missouri, the expenses of funeral and burial and compliance with future orders of the court in relation to the estate of the decedent; and further conditioned that any part of the property to which the distributee is not entitled will be delivered to the persons entitled to the

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

16 property under the law. Liability of the sureties on the bonds provided for in this section  
17 terminates unless proceedings against them are instituted within two years after the bond is filed;  
18 except that, the court may dispense with the filing of a bond if it finds that the same is not  
19 necessary;

20 (4) A fee, in the amount prescribed in [subdivision (4) of] subsection 1 of section  
21 483.580, RSMo, and when required, the publication cost of the notice to creditors are paid or the  
22 proof of payment for such publication is provided to the clerk of the probate [court] **division**.

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

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

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

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

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

38 (5) The names, addresses and relationship to the decedent of the persons entitled to and  
39 who will receive, the specific items of property remaining after payment of claims and debts of  
40 the decedent, included in the affidavit;

41 (6) The facts establishing the right to such specific items of property as prescribed by this  
42 section.

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44 The certificate of the clerk shall be annexed to or endorsed on the affidavit and shall show the  
45 names and addresses of the persons entitled to the described property under the facts stated in  
46 the affidavit and shall recite that the will of decedent has been probated or that no will has been  
47 presented to the court and that all estate taxes on the property, if any are due, have been paid.

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

50 4. The distributees mentioned in this section may establish their right to succeed to the  
51 real estate of the decedent by filing a copy of the foregoing affidavit and certificate of the clerk

52 in the office of the recorder of deeds of each county where the real property is situated.

53 5. When the value of the property listed in the affidavit is more than fifteen thousand  
54 dollars, the clerk shall cause to be published in a newspaper of general circulation within the  
55 county which qualifies under chapter 493, RSMo, a notice to creditors of the decedent to file  
56 their claims in the court or be forever barred. The notice shall be published once a week for two  
57 consecutive weeks. Proof of publication of notice pursuant to this section shall be filed not later  
58 than ten days after completion of the publication. The notice shall be in substantially the  
59 following form:

60 To all persons interested in the estate of ....., Decedent:

61 On the ..... day of ....., [19...] **20...**, a small estate affidavit  
62 was filed by the distributees for the decedent under section 473.097, RSMo, with the probate  
63 division of the circuit court of ..... County, Missouri.

64 All creditors of the decedent, who died on ....., [19...] **20...**, are notified that  
65 section 473.444 sets a limitation period that would bar claims one year after the death of the  
66 decedent. A creditor may request that this estate be opened for administration.

67 Receipt of this notice should not be construed by the recipient to indicate that the  
68 recipient may possibly have a beneficial interest in the estate. The nature and extent of any  
69 person's interest, if any, may possibly be determined from the affidavit on this estate filed in the  
70 probate division of the circuit court of ..... County, Missouri.

71 Date of first publication is ....., [19...] **20...**

72 .....

73 Clerk of the Probate Division  
74 of the Circuit Court  
75 ..... County, Missouri

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

81 7. The affiant shall collect the property of decedent described in the affidavit. The  
82 property of decedent shall be liquidated by the affiant to the extent necessary to pay debts of  
83 decedent. If the decedent's property is not sufficient to pay such debts, abatement of the shares  
84 of the distributees shall occur in accordance with section 473.620. The affiant shall distribute  
85 the remaining property to such persons identified in the affidavit as required in subdivision (5)  
86 of subsection 2 of this section who are entitled to receive the specific items of personal property,  
87 as described in the affidavit, or to have any evidence of such property transferred to such persons.

88 To the extent necessary to facilitate distribution, the affiant may liquidate all or part of decedent's  
89 property.