

1 State of Arkansas
2 95th General Assembly
3 Regular Session, 2025
4

A Bill

HOUSE BILL 1839

5 By: Representative Dalby
6 By: Senator A. Clark
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE PROCEDURES FOR THE DECLARATION OF
10 LEGAL DEATH OF A MISSING PERSON; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

15 TO AMEND THE PROCEDURES FOR THE
16 DECLARATION OF LEGAL DEATH OF A MISSING
17 PERSON.
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 28-8-102 is amended to read as follows:

22 28-8-102. Declaration of ~~heirs~~ legal death.

23 ~~(a) In all cases, when any person desires to make a person an heir at~~
24 ~~law, it shall be lawful to do so by a declaration in writing in favor of the~~
25 ~~person, to be acknowledged before any judge, justice of the peace, clerk of~~
26 ~~any court, or before any court of record in this state~~ the event that there
27 is cause to believe that a person domiciled in this state is deceased, either
28 by virtue of having been missing for more than five (5) years under § 16-40-
29 105 or by the nature of his or her absence, any interested party may file an
30 action in probate court seeking a legal declaration that the person is dead.

31 ~~(b) Before the declaration shall be of any force or effect, it shall~~
32 ~~be recorded in the county where the declarant may reside, or in the county~~
33 ~~where the person in whose favor such a declaration is made may reside~~ A
34 petition to declare a person legally dead shall include a detailed affidavit
35 of one (1) or more persons that describes the:

36 (1) Circumstances of the absence of the person the petitioner



1 seeks to be declared legally dead; and

2 (2) Significant attempts made to locate the person the
3 petitioner seeks to be declare legally dead.

4 (c) The venue for a petition filed under this section shall be in the
5 county where the person whom the petitioner seeks to be declared legally dead
6 resided at the time of his or her disappearance in accordance with § 28-40-
7 102(a).

8 (d)(1) The petitioner shall provide notice of the proceeding under §
9 28-1-112 to:

10 (A) Any person related within two (2) degrees of
11 consanguinity of the missing individual who can be reasonably located, unless
12 the person waives the right to notice in writing;

13 (B) Any person or entity with a financial interest in
14 whether the relevant person is living or dead of at least five thousand
15 dollars (\$5,000); and

16 (C) Any other person or entity that a court directs to be
17 provided notice.

18 (2) The petitioner shall publish notice of the proceeding in a
19 newspaper published and having general circulation in the county under § 28-
20 1-112(b)(4)(A).

21 (3)(A) The notices described in this subsection (d) shall
22 include a copy of the petition and the time, date, and location of the
23 hearing.

24 (B) The hearing shall occur no earlier than ninety (90)
25 days after the filing of the petition.

26 (C)(i) The court may continue the hearing for good cause
27 shown by an interested party.

28 (ii) If a hearing is continued under subdivision
29 (d)(3)(C)(i) of this section, the petitioner or the court shall notify each
30 person who appeared for the original hearing or who has filed a pleading in
31 the matter.

32 (e)(1) At the hearing, the court shall take evidence for the purpose
33 of:

34 (A) Determining whether a diligent and reasonable effort
35 has been made to locate the missing individual; and

36 (B) Showing that the missing individual is dead or alive.

1 (2) A hearing under this section is subject to the Arkansas
 2 Rules of Evidence.

3 (3)(A) If it is proven by a preponderance of evidence that the
 4 person has been missing for at least five (5) years, there is a rebuttable
 5 presumption that the person is dead under § 16-40-105.

6 (B) If credible evidence establishes that it has been
 7 fewer than five (5) years since the person was known to be alive, the burden
 8 of proof for the petitioner shall be clear and convincing to establish that
 9 the person is now dead.

10 (C) A finding by the court that the burden of proof of
 11 clear and convincing evidence to establish death has not been met shall not
 12 preclude the petitioner or another person from later filing a new petition
 13 once the individual has been missing for more than five (5) years under
 14 subsection (a) of this section or with new material information.

15 (f) If the court enters a finding that a person is legally dead under
 16 this section, a probate action to administer the decedent's estate may be
 17 initiated in a new case.

18
 19 SECTION 2. Arkansas Code § 28-40-110(c), concerning service of a
 20 notice of a hearing on a petition for administration of a decedent's estate
 21 by registered mail to the last known residence address of the alleged
 22 decedent when the fact of the alleged decedent's death is in doubt or upon
 23 the written demand of an interested person, is repealed.

24 ~~(c) If it appears by the petition or otherwise that the fact of the~~
 25 ~~death of the person whose estate is to be administered may be in doubt, or on~~
 26 ~~the written demand of an interested person, a copy of the notice of the~~
 27 ~~hearing on the petition shall be sent by registered mail to the last known~~
 28 ~~residence address of the alleged decedent.~~

29
 30 SECTION 3. Arkansas Code § 28-40-112 is amended to read as follows:
 31 28-40-112. Search for alleged decedent.

32 ~~Whenever~~ If there is reasonable doubt good cause to believe that the
 33 person whose estate is to be administered is not dead, the court, upon
 34 application petition of an interested person accompanied by an affidavit
 35 giving sufficient detail to establish a reasonable possibility that the
 36 person whose estate to be administered is alive, may direct the personal

1 representative or the interested person to ~~make search for the alleged~~
 2 ~~decedent in any manner which the court may deem advisable, including, but not~~
 3 ~~limited to, any or all of the following methods:~~

4 ~~(1) By inserting in one (1) or more suitable periodicals a~~
 5 ~~notice requesting information from any person having knowledge of the~~
 6 ~~whereabouts of the alleged decedent;~~

7 ~~(2) By notifying officers of justice and public welfare agencies~~
 8 ~~in appropriate locations of the disappearance of the alleged decedent; or~~

9 ~~(3) By engaging the services of an investigating agency carry~~
 10 ~~out the provisions in § 28-8-102(d) and (e).~~

11
 12 SECTION 4. Arkansas Code § 28-40-121 is amended to read as follows:

13 28-40-121. Finality of order – Conclusiveness of finding of death.

14 An order admitting a will to probate or for the appointment of a
 15 personal representative, if not contested or appealed from, shall be final,
 16 subject to the following exceptions:

17 (1) It may be reopened at any time prior to the order of final
 18 distribution for the purpose of admitting to probate a will not theretofore
 19 presented to the court;

20 (2) It may be vacated or modified for good cause as provided in
 21 § 28-1-115; and

22 (3)(A) The finding of the fact of death shall be conclusive as
 23 to the alleged decedent only if the ~~notice of the hearing on the petition for~~
 24 ~~probate or for the appointment of a personal representative is sent by~~
 25 ~~registered mail addressed to the alleged decedent at his or her last known~~
 26 ~~residence address and when a search is ordered for the alleged decedent as~~
 27 ~~provided in § 28-40-112, the court finds that the search was made provisions~~
 28 ~~in § 28-8-102(d) and (e) have been carried out.~~

29 (B) If ~~notice is sent and search made,~~ the provisions in §
 30 28-8-102(d) and (e) have been carried out and the alleged decedent is not
 31 dead, he or she may nevertheless at any time recover the estate from the
 32 personal representative if it is in his or her hands, or he or she may
 33 recover the estate or its proceeds from the distributees, if either is in
 34 their hands.

35
 36