

## CHAPTER 1128

## PROBATE CODE

## S. F. 1194

AN ACT relating to the Iowa Probate Code.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. Section six hundred thirty-three point forty (633.40),  
2 Code 1971, is amended by adding the following new subsections:

3 4. Notice otherwise provided. In lieu of the foregoing the notice  
4 may direct each interested party to appear in the court in which the  
5 proceedings are pending, and to file his objections thereto in writing,  
6 of any he has, within twenty days after the day such notice is served  
7 upon him and that unless he does so appear and file his objections in  
8 writing that he will be forever barred from making any objections  
9 thereto. Said notice may be served upon each interested party either  
10 by ordinary United States mail or personally in compliance with the  
11 rules of civil procedure. In the event objections thereto are timely  
12 filed, the court shall fix the time and place of the hearing for the  
13 judicial determination of the issues raised.

14 5. Notice by mail. When notice in probate proceedings is served  
15 upon an interested party by United States mail, the service is made  
16 and completed when the notice being served is enclosed in a sealed  
17 envelope with the proper postage thereon addressed to the interested  
18 party at his last known post office address and is deposited in a mail  
19 receptacle provided by the United States postal service.

1 SEC. 2. Section six hundred thirty-three point two hundred eleven  
2 (633.211), subsection four (4), Code 1971, is amended to read as  
3 follows:

4 4. If the property received by the surviving spouse under subsec-  
5 tions 1, 2 and 3 of this section is not equal in value to the sum of  
6 ~~fifteen~~ *twenty-five* thousand dollars, then so much additional of the  
7 remaining real and personal property of the decedent that is subject  
8 to payment of debts and charges against the decedent's estate, after  
9 payment of such debts and charges, even to the extent of the whole  
10 of the net estate, as may be necessary to make the amount of ~~fifteen~~  
11 *twenty-five* thousand dollars.

1 SEC. 3. Section six hundred thirty-three point two hundred twelve  
2 (633.212), subsections four (4) and five (5), Code 1971, are amended  
3 to read as follows:

4 4. If the property received by the surviving spouse under subsec-  
5 tions 1 and 3 of this section is not equal in value to the sum of ~~fifteen~~  
6 *twenty-five* thousand dollars, then so much additional of the non-  
7 exempt real and personal property of the decedent remaining after  
8 payment of the debts and charges against the estate, as may be neces-  
9 sary (even to the extent of the entire net estate) to make the amount  
10 of ~~fifteen~~ *twenty-five* thousand dollars.

11 5. So much additional of the remaining real and personal property  
12 belonging to the decedent as is necessary to make the entire share of  
13 the surviving spouse, including the property received under subsec-  
14 tions 1, 3 and 4 of this section, equal in value to the aforesaid sum of  
15 ~~fifteen~~ *twenty-five* thousand dollars plus one-half of the net value of

16 the estate over and above the said sum of ~~fifteen~~ *twenty-five* thousand  
17 dollars and the value of the exempt personal property.

1 SEC. 4. Section six hundred thirty-three point two hundred  
2 seventy-one (633.271), Code 1971, is amended to read as follows:

3 **633.271 Effect of divorce or dissolution.** If after making a will  
4 the testator is divorced *or the marriage is dissolved*, all provisions  
5 in the will in favor of the testator's spouse ~~so divorced~~ are thereby  
6 revoked. *In the event the testator and spouse remarry each other,*  
7 *the provisions of the will revoked by the divorce or dissolution of*  
8 *marriage shall be reinstated unless otherwise revoked by the testator.*

1 SEC. 5. Section six hundred thirty-three point four hundred fifteen  
2 (633.415), unnumbered paragraph one (1), Code 1971, is amended to  
3 read as follows:

4 **633.415 Commencement or continuance of separate action.** Any  
5 action pending against the decedent at the time of his death that sur-  
6 vives, shall also be considered a claim filed against the estate if notice  
7 of substitution is served upon the personal representative as defendant  
8 within the time provided for filing claims in section 633.410; *however,*  
9 *this provision shall not bar parties entitled to equitable relief due to*  
10 *peculiar circumstances.* A copy of the proof of service of notice of  
11 such proceedings shall be filed in the probate proceedings but shall  
12 not be jurisdictional.

1 SEC. 6. Section six hundred thirty-three point five hundred fifty-  
2 two (633.552), Code 1971, is amended by striking subsection two (2)  
3 and inserting in lieu thereof the following:

4 2. That the proposed ward is a minor or is incapable of caring for  
5 his own person.

1 SEC. 7. Section six hundred thirty-three point five hundred fifty-  
2 seven (633.557), Code 1971, is amended by striking the section and  
3 inserting in lieu thereof the following:

4 **633.557 Appointment of guardian on voluntary petition.** A guard-  
5 ian may also be appointed by the court upon the verified petition of  
6 the proposed ward, without further notice, if he is other than a minor  
7 under the age of fourteen years, provided the court determines that  
8 such an appointment will inure to the best interest of the applicant.  
9 However, if an involuntary petition is pending, the court shall be gov-  
10 erned by section six hundred thirty-three point six hundred thirty-five  
11 (633.635) of the Code.

1 SEC. 8. Section six hundred thirty-three point five hundred sixty-  
2 six (633.566), Code 1971, is amended by striking subsection two (2)  
3 and inserting in lieu thereof the following:

4 2. That the proposed ward is a minor or is incapable of managing  
5 his property.

1 SEC. 9. Section six hundred thirty-three point five hundred  
2 seventy-two (633.572), Code 1971, is amended by striking the section  
3 and inserting in lieu thereof the following:

4 **633.572 Appointment of conservator on voluntary petition.** A con-  
5 servator may also be appointed by the court upon the verified petition  
6 of the proposed ward, without further notice, if he is other than a  
7 minor under the age of fourteen years, provided the court determines

8 that such an appointment will inure to the best interest of the appli-  
 9 cant. However, if an involuntary petition is pending, the court shall  
 10 be governed by section six hundred thirty-three point six hundred  
 11 thirty-five (633.635) of the Code.

1 SEC. 10. Section six hundred thirty-three point six hundred four  
 2 (633.604), Code 1971, is amended to read as follows:

3 **633.604 Application.** The application for appointment of a foreign  
 4 conservator or guardian as conservator in this state shall include the  
 5 name and address of the nonresident ward, and of the nonresident  
 6 conservator or guardian, and the name and address of the resident  
 7 conservator to be appointed. It shall be accompanied by ~~an exemplified~~  
 8 *a certified* copy of the original letters or other authority conferring  
 9 the power upon the foreign conservator or guardian to act as such.  
 10 The application shall also state the cause for the appointment of the  
 11 foreign conservator to act as sole conservator, if such be the case.

1 SEC. 11. Chapter six hundred thirty-three (633), Code 1971, as  
 2 amended by chapter two hundred eighteen (218), sections eleven (11)  
 3 and twelve (12), Acts of the Sixty-fourth General Assembly, First  
 4 Session, is amended by adding the following new division and section:

5 DIVISION XVI

6 DISCLAIMER OF SUCCESSION TO REAL AND PERSONAL PROPERTY

7 **633.704 Right to disclaim succession.**

8 1. Right of distributee. No person shall be required to take as a  
 9 distributee, or otherwise, under the laws of Iowa, and any person may  
 10 disclaim in whole or in part, the succession to any property, real or  
 11 personal, or interest therein, including a power of appointment, by  
 12 filing a written instrument within the time and at the place herein-  
 13 after provided. The instrument shall:

14 a. Describe the property or part thereof or interest therein dis-  
 15 claimed,

16 b. Declare the disclaimer and the extent thereof and

17 c. Be signed and acknowledged by the disclaimant.

18 2. Time and place of filing. The disclaimer instrument shall be  
 19 filed within six months after the date of the second publication of the  
 20 notice to creditors, or within six months after the death of the donee  
 21 of the power, as the case may be, or if the taker of the property or  
 22 interest is not then finally ascertained or his interest has not become  
 23 indefeasibly fixed both in quality and in quantity, then not later than  
 24 two months after the event when the taker has become finally ascer-  
 25 tained and his interest has become indefeasibly fixed both in quality  
 26 and in quantity. The instrument shall be filed with the clerk in the  
 27 county where the administration proceedings are pending. A copy of  
 28 the instrument shall also be mailed to the personal representative of  
 29 the decedent, if any. The instrument shall be irrevocable upon filing.

30 3. Effective disclaimer. Unless the decedent or donee of the power  
 31 has otherwise provided, the property or part thereof or interest  
 32 therein disclaimed, and any future interest which is to take effect in  
 33 possession or enjoyment at or after the termination of the interest  
 34 disclaimed, shall descend or be distributed as if the disclaimant has  
 35 predeceased the decedent, or if the disclaimant is one designated to  
 36 take pursuant to a power of appointment, exercised by testamentary  
 37 instrument, then as if the disclaimant has predeceased the donee of

38 the power. In every case, the disclaimer shall relate back for all pur-  
 39 poses to the date of the death of the decedent or the donee, as the case  
 40 may be. A person who has a present and a future interest in property  
 41 and disclaims his present interest in whole or in part, shall be deemed  
 42 to have disclaimed his future interest to the same extent. In the event  
 43 of death of the disclaimant within the time allowed for the filing of a  
 44 disclaimer, the right to disclaim shall terminate. In the event of dis-  
 45 ability of a person entitled to disclaim, the court may authorize or  
 46 direct a conservator or guardian to exercise the right to disclaim on  
 47 behalf of the person under disability when it is in his interest that it  
 48 be done.

49 4. Waiver and bar. Any assignment, conveyance, encumbrance,  
 50 pledge or transfer of property or any interest therein or any contract  
 51 therefore,\* or any written waiver of the right to disclaim or any  
 52 acceptance of property or interest therein by an heir, next of kin,  
 53 devisee, legatee, donee, person succeeding to a disclaimed interest,  
 54 beneficiary or person designated to take pursuant to a power of  
 55 appointment exercised by testamentary instrument, and any sale of  
 56 property by execution, made before the expiration of the period in  
 57 which a person may disclaim as provided in this section, bars the right  
 58 to disclaim the property. The right to disclaim granted by this section  
 59 shall exist irrespective of any limitation on the interest of the dis-  
 60 claimant in the nature of a spendthrift provision or similar restric-  
 61 tion. A disclaimer, when filed and recorded as provided in this section  
 62 or a written waiver of the right to disclaim, shall be binding upon the  
 63 disclaimant or person waiving and all parties claiming by, through  
 64 or under him. The right to disclaim shall follow the proceeds of a  
 65 disposition of property by a fiduciary, and shall not affect the dis-  
 66 position.

Approved April 22, 1972.

\*According to enrolled Act.

## CHAPTER 1129

### CHANGING NAMES

S. F. 202

AN ACT relating to changing of names by individuals.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. Chapter six hundred seventy-four (674), Code 1971,  
 2 is amended by striking the chapter and inserting in lieu thereof sec-  
 3 tions two (2) through fourteen (14) of this Act.

1 SEC. 2. Any person, under no civil disabilities, who has attained  
 2 his or her majority, desiring to change his or her name, may do so  
 3 by filing a verified petition as provided in this chapter.

1 SEC. 3. The verified petition shall be addressed to the district court  
 2 and shall state: