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*Inducing 3/12*

SENATE FILE **388**

By RILEY

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

## A BILL FOR

1 An Act to establish full property rights between husband and  
2 wife.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
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1 Section 1. Section six hundred thirty-three point two  
2 hundred eleven (633.211), Code 1971, is amended as follows:

3 633.211 SHARE OF SURVIVING SPOUSE IF DECEDENT LEFT ISSUE.

4 If the decedent dies intestate leaving a surviving spouse who  
5 is living on the sixtieth day after date of the decedent's  
6 death and-leaving-issue, the such surviving spouse shall  
7 receive the-following-share:

8 ~~1.--One-third-in-value-of~~ all the legal or equitable estates  
9 in real property possessed by the decedent at any time during  
10 the marriage, which have not been sold on execution or other  
11 judicial sale, and to which the surviving spouse has made no  
12 relinquishment of his right; all

13 ~~2.--All~~ personal property that, at the time of death, was,  
14 in the hands of the decedent as the head of a family, exempt  
15 from execution; and

16 ~~3.--One-third-of~~ all other personal property of the decedent  
17 which is not necessary for the payment of debts and charges.  
18 If the decedent dies intestate leaving a surviving spouse who  
19 is not living on the sixtieth day after the date of the decedent's  
20 death, none of the decedent's real or personal property shall  
21 pass to or vest in said surviving spouse but it shall be distrib-  
22 uted as provided in section 633.219 as if decedent left no  
23 surviving spouse.

24 ~~4.--If-the-property-received-by-the-surviving-spouse-under~~  
25 ~~subsections-1,2-and-3-of-this-section-is-not-equal-in-value~~  
26 ~~to-the-sum-of-fifteen-thousand-dollars,-then-so-much-additional~~  
27 ~~of-the-remaining-real-and-personal-property-of-the-decedent~~  
28 ~~that-is-subject-to-payment-of-debts-and-charges-against-the~~  
29 ~~decedent's-estate,-after-payment-of-such-debts-and-charges,~~  
30 ~~even-to-the-extent-of-the-whole-of-the-net-estate,-as-may-be~~  
31 ~~necessary-to-make-the-amount-of-fifteen-thousand-dollars-~~

32 Sec. 2. Section six hundred thirty-three point two hundred  
33 twelve (633.212), Code 1971, is repealed.

34 Sec. 3. Section six hundred thirty-three point two hundred  
35 nineteen (633.219), unnumbered paragraph one (1), Code 1971, is

1 amended as follows:

2 ~~The portion of the estate remaining after the payment of~~  
3 ~~the debts and charges, and not distributed to the surviving~~  
4 ~~spouse, as provided in this Code, or if~~ If there is no sur-  
5 viving spouse, then the remaining estate after payment of the  
6 debts and charges, shall descend and be distributed as follows:

7 Sec. 4. Section six hundred thirty-three point two hundred  
8 thirty-eight (633.238), Code 1971, is amended as follows:

9 633.238 SHARE OF SURVIVING SPOUSE WHO ELECTS TO TAKE  
10 AGAINST WILL. If the surviving spouse elects to take against  
11 the will, the share of such surviving spouse will be:

12 1. ~~One-third~~ half in value of all the legal or equitable  
13 estates in real property possessed by the decedent at any time  
14 during the marriage, which have not been sold on execution or  
15 other judicial sale, and to which the surviving spouse has  
16 made no relinquishment of his right.

17 2. All personal property that, at the time of death, was  
18 in the hands of the decedent as the head of a family, exempt  
19 from execution.

20 3. ~~One-third~~ half of all other personal property of the  
21 decedent that is not necessary for the payment of debts and  
22 charges.

23 Sec. 5. Section five hundred ninety-eight point twenty-one  
24 (598.21), Code 1971, is amended as follows:

25 598.21 ALIMONY--CUSTODY OF CHILDREN--CHANGES. When a  
26 dissolution of marriage is decreed, the court may make such  
27 order in relation to the children, property, parties, and the  
28 maintenance of the parties as shall be justified. Subject to  
29 a finding by the court of extenuating circumstances justifying  
30 otherwise, each party shall be entitled to receive, free and  
31 clear of the claims of the other, an equal division of all real  
32 and personal property accumulated during the marriage, ir-  
33 respective of whether title is held in the name of only one or  
34 both of the parties. The court, in making a division of real  
35 and personal property between the parties, is not precluded

1 from making further provision for maintenance of the parties  
2 and their children.

3 Subsequent changes may be made by the court in these  
4 respects when circumstances render them expedient.

5 EXPLANATION

6 This bill recognizes that property accumulated during  
7 marriage is usually the result of joint efforts of husband  
8 and wife, even where the wife's employment is not outside  
9 the home. Under current law, the wife is entitled to only  
10 one-third of her husband's property (and vice versa) except  
11 for a provision that allows the wife the first \$15,000.

12 In nineteen years of practicing law, the sponsor recalls  
13 only two or three occasions where clients desired to leave  
14 less than all of their estate to their spouse if she survived.  
15 Thus, present Iowa law in leaving only one-third to the spouse  
16 runs counter to intentions of the overwhelming majority of  
17 married couples, and if they die without a will, their inten-  
18 tions are frustrated. In addition, not only does the sur-  
19 viving spouse get less than what the decedent would like him  
20 or her to have but the two-thirds usually passes to minor  
21 children and must be held in conservatorship with the attendant  
22 expense. Even with passage of this bill, a will would still  
23 be desirable for a number of reasons, (i.e. where there are  
24 minor children, estate or inheritance tax problems and so forth).  
25 However, passage of this bill would, at least, make the distri-  
26 bution of an estate consistent with the intention of most  
27 married couples should they fail to have a will.

28 Of course, if a husband or wife does not desire to leave all  
29 of his or her property to the spouses (and as the size of an  
30 estate increases, there are tax considerations for not doing so,  
31 such as utilization of the marital deduction trust), this bill  
32 permits a decedent to leave up to one-half of his or her estate  
33 to his or her children or others. The spouse could not be cut  
34 out of more than 50 percent, however, compared to present law  
35 which allows the surviving spouse to be cut out of two-thirds,

1 in effect.

2 The reason for the requirement that a spouse be living on  
3 the sixtieth day after date of death is to avoid unnecessary  
4 estate, inheritance taxes and probate costs, such as attorney  
5 and executor fees. In the event of a common accident in which  
6 either the husband or wife survives the other for a short time  
7 (for example, if the husband were dead on arrival at the  
8 hospital and the wife lived a few hours), under present Iowa  
9 law and without the sixty-day requirement of this bill, the  
10 husband's property would be taxed in his estate and costs of  
11 probate assessed against it and then the property would be  
12 probated through the wife's estate and retaxed and assessed  
13 with the same costs. With the sixty-day requirement, the  
14 property would pass directly to the children with only one tax  
15 and probate assessment.

16 The bill also establishes a standard that the property will  
17 be divided equally in the event of dissolution of marriage.  
18 This is again premised on the concept that property is generally  
19 accumulated by a joint contribution regardless of whether or  
20 not the wife works outside the home since the wife provides  
21 extremely valuable services which could not be purchased within  
22 the take-home pay of most husbands. The bill does not abrogate  
23 the court's right, however, to make an unequal division if  
24 warranted. As an example of this, the court could leave the  
25 homestead to the wife during the minority of the children.

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