

SENATE FILE 1205

By RILEY

FILED FEB 23 1974
Senate File 1205
Judiciary—
Ramsey, Chairman
DeKoster
Kennedy

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the sale and assignment of a decedent's
2 property, exempt property of a decedent's estate, alloca-
3 tion of the proceeds from a wrongful death action, power
4 of attorney and the filing of a final fiduciary return.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section four hundred twenty-two point twenty-
2 seven (422.27), subsection one (1), Code 1973, is amended
3 to read as follows:

4 1. No final account of ~~a-fiduciary~~ an executor,
5 administrator, or trustee shall be allowed by any court unless
6 such account shows, and the judge of said court finds, that
7 all taxes imposed by the provisions of this division upon
8 said ~~fiduciary~~ executor, administrator or trustee which have
9 become payable, have been paid, and that all taxes which may
10 become due are secured by bond, deposit or otherwise. The
11 certificate of the director and the receipt for the amount
12 of the tax therein certified shall be conclusive as to the
13 payment of the tax to the extent of said certificate.

14 Sec. 2. Section six hundred thirty-three point twenty-
15 two (633.22), Code 1973, is amended by adding the following
16 new subsection:

17 NEW SUBSECTION. The approval, when notice has been waived
18 by all persons interested, of petitions and reports, or joint
19 petitions and reports, in respect to the sale, mortgage,
20 pledge, lease or exchange of property pursuant to sections
21 six hundred thirty-three point three hundred eighty-six
22 (633.386) through six hundred thirty-three point four hundred
23 (633.400), of the Code, inclusive.

24 Sec. 3. Section six hundred thirty-three point twenty-
25 three (633.23), Code 1973, is amended to read as follows:

26 633.23 CLERK'S ACTIONS REVIEWED. Any person aggrieved
27 by any order made or entered by the clerk under the powers
28 conferred in section 633.22, subsections one (1) through four
29 (4) inclusive, may have the same reviewed in court upon motion
30 filed within six months or before the hearing on the final
31 report of the fiduciary, whichever is the earlier, and upon
32 such notice as ~~the court may prescribe~~ provided in section
33 six hundred thirty-three point forty (633.40) of the Code.

34 Sec. 4. Section six hundred thirty-three point ninety-
35 five (633.95), Code 1973, is amended to read as follows:

1 633.95 RELEASE OF LIENS AND MORTGAGES. Any fiduciary
2 qualified under the laws of this state may, without prior
3 order of court, ~~release, assign or discharge,~~ in whole or
4 in part any mortgage, judgment or other lien held by the
5 estate.

6 Sec. 5. Section six hundred thirty-three point three hun-
7 dred thirty-two (633.332), Code 1973, is amended to read as
8 follows:

9 633.332 EXEMPT PERSONAL PROPERTY. When the decedent left
10 a surviving spouse all personal property, which in the hands
11 of the decedent as head of a family would be exempt from
12 execution, ~~after~~ and which is bequeathed or being-inventoried
13 and appraised, shall be set aside to the surviving spouse,
14 and in accordance with the provisions of law, the personal
15 property shall be exempt in the hands of such surviving spouse
16 as in the hands of the decedent.

17 Sec. 6. Section six hundred thirty-three point three hun-
18 dred thirty-six (633.336), Code 1973, is amended to read as
19 follows:

20 633.336 DAMAGES FOR WRONGFUL DEATH. When a wrongful act
21 produces death, damages recovered therefor shall be disposed
22 of as ~~personal~~ property belonging to the estate of the de-
23 ceased, ~~but if the deceased leaves a spouse, child, or parent,~~
24 ~~it shall not be liable for the payment of debts of the estate,~~
25 ~~except debts and charges of first, second, third and fifth~~
26 classes however, if the damages include damages for loss of
27 services and support of a deceased spouse and parent, such
28 damages shall be apportioned by the court among the surviving
29 spouse and children of the decedent in such manner as the
30 court may deem equitable consistent with the loss of services
31 and support sustained by the surviving spouse and children
32 respectively. Damages so apportioned shall not be subject
33 to debts and charges of the decedent's estate.

34 Sec. 7. Chapter six hundred thirty-three (633), division
35 sixteen (XVI), Code 1973, is amended by adding the following

1 new sections:

2 NEW SECTION. WHEN POWER OF ATTORNEY NOT AFFECTED BY
3 DISABILITY. Whenever a principal designates another his
4 attorney in fact or agent by a power of attorney in writing
5 and the writing contains the words "This power of attorney
6 shall not be affected by disability of the principal," or
7 "This power of attorney shall become effective upon the
8 disability of the principal," or similar words showing the
9 intent of the principal that the authority conferred shall
10 be exercisable notwithstanding his disability, the authority
11 of the attorney in fact or agent is exercisable by him as
12 provided in the power on behalf of the principal
13 notwithstanding later disability or incapacity of the principal
14 or later uncertainty as to whether the principal is dead or
15 alive. All acts done by the attorney in fact or agent pursuant
16 to the power during any period of disability or incompetence
17 or uncertainty as to whether the principal is dead or alive
18 have the same effect and inure to the benefit of and bind
19 the principal and his heirs, devisees and personal
20 representative as if the principal were alive, competent and
21 not disabled. If a conservator thereafter is appointed for
22 the principal, the attorney in fact or agent, during the
23 continuance of the appointment, shall account to the
24 conservator rather than the principal, and the conservator
25 shall have the power to revoke the power of attorney on behalf
26 of the principal.

27 NEW SECTION. OTHER POWERS OF ATTORNEY NOT REVOKED UNTIL
28 NOTICE OF DEATH OR DISABILITY.

29 1. The death, disability, or incompetence of any principal
30 who has executed a power of attorney in writing other than
31 a power as described by section six hundred thirty-three point
32 seven hundred five (633.705) of the Code, does not revoke or
33 terminate the agency as to the attorney in fact, agent or
34 other person who, without actual knowledge of the death, dis-
35 ability, or incompetence of the principal, acts in good faith

1 under the power of attorney or agency. Any action so taken,
2 unless otherwise invalid or unenforceable, binds the princi-
3 pal and his heirs, devisees, and personal representatives.

4 2. An affidavit, executed by the attorney in fact or agent
5 stating that he did not have, at the time of doing an act
6 pursuant to the power of attorney, actual knowledge of the
7 revocation or termination of the power of attorney by death,
8 disability or incompetence, is, in the absence of fraud, con-
9 clusive proof of the nonrevocation or nontermination of the
10 power at that time. If the exercise of the power requires
11 execution and delivery of any instrument which is recordable,
12 the affidavit when properly acknowledged is likewise
13 recordable.

14 3. This section shall not be construed to alter or affect
15 any provision for revocation or termination contained in the
16 power of attorney.

17 EXPLANATION

18 This bill defines the class of persons required to file
19 a final fiduciary return by exempting conservators and
20 guardians. This bill also allows the clerk of the probate
21 court, when notice is waived, to approve the sale of property
22 by a fiduciary. This bill also prohibits a fiduciary from
23 assigning a lien or mortgage. This bill also provides that
24 exempt property will only retain its exempt character when
25 bequeathed or set aside to the spouse. In addition, this
26 bill provides that the probate court shall allocate the
27 proceeds of a wrongful death action to the decedent's spouse,
28 parent, or children. This bill also provides that a power
29 of attorney may be drafted to remain effective in the event
30 the principal becomes disabled and provides that a regular
31 power of attorney shall remain in effect until the agent has
32 actual knowledge of the principal's death or disability.

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