

Amending 3/28 Do pass 4/13 per 3332 (p. 1045)

SENATE FILE 280

Judiciary *4/1*
P. Hill, Chairperson
DeKoster
Coleman

FILED MAR 25 1977

SENATE FILE 280

By KELLY

The Judiciary 4/20

Senate File 280
Judiciary and Law
Enforcement
Nielsen, chair
Shimanek
Connors

enate, Date 4-15-77 (p. 1054) Passed House, Date 5-20-77 (p. 2518)

yes 41 Nays 0 Vote: Ayes 82 Nays 0

Approved 7/9/77

Repassed Senate per S. 3709 5-20-77 (p. 1591)
46-0

A BILL FOR

1 An Act relating to the disposition of a decedent's property.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 280

Senate File 280

S-3332

- 1 Amend Senate File 280 as follows:
- 2 1. Page 2, line 1 by striking the words
- 3 "his or her" and inserting in lieu thereof the
- 4 word "a".
- 5 2. Page 2, line 4 by striking the word
- 6 "acknowledge" and inserting in lieu thereof the
- 7 word "acknowledged".

S-3332 FILED - *Adopted 4/15 (p. 1054)* BY GENE W. GLENN, CHAIRPERSON
APRIL 13, 1977 COMMITTEE ON JUDICIARY

1 Section 1. Section six hundred thirty-three point one
2 hundred eighteen (633.118), Code 1977, is amended to read
3 as follows:

4 633.118 ATTORNEY APPOINTED FOR PERSONS NOT REPRESENTED.
5 At or before the hearing in any proceedings under this Code,
6 where all the parties interested in the estate are required
7 to be notified thereof, the court, in its discretion, may
8 appoint some competent attorney to represent any interested
9 person who has been served with notice and who is otherwise
10 unrepresented. The appointment of an attorney under the
11 provisions of this section, shall be in lieu of appointment
12 of a guardian ad litem provided for in the rules of civil
13 procedure.

14 Sec. 2. Section six hundred thirty-three point two hun-
15 dred seventy-nine (633.279), Code 1977, is amended by strik-
16 ing subsection two (2) and inserting in lieu thereof the
17 following:

18 2. SELF-PROVED WILL. An attested will may be made self-
19 proved at the time of its execution, or at any subsequent
20 date, by the acknowledgement thereof by the testator and the
21 affidavits of the witnesses, each made before a person
22 authorized to administer oaths and take acknowledgments under
23 the laws of this state, and evidenced by such person's
24 certificate, under seal, attached or annexed to the will,
25 in form and content substantially as follows:

26 Affidavit

27 State of _____ ss

28 County of _____

29 We, the undersigned, _____, _____ and
30 _____, the testator and the witnesses, respectively,
31 whose names are signed to the attached or foregoing instrument,
32 being first duly sworn, declare to the undersigned authority
33 that said instrument is the testator's will and that the
34 testator willingly signed and executed such instrument, or
35 expressly directed another to sign the same in the presence

1 of the witnesses, as his or her free and voluntary act for
2 the purposes therein expressed; that said witnesses, and each
3 of them, declare to the undersigned authority that such will
4 was executed and acknowledge by the testator as the testator's
5 will in their presence and that they, in the testator's
6 presence, at the testator's request, and in the presence of
7 each other, did subscribe their names thereto as attesting
8 witnesses on the date of the date of such will; and that the
9 testator, at the time of the execution of such instrument,
10 was of full age and of sound mind and that the witnesses were
11 sixteen years of age or older and otherwise competent to be
12 witnesses.

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Testator

Witness

Witness

19 Subscribed, sworn and acknowledged before me by _____
20 _____, the testator; and subscribed and sworn before
21 me by _____ and _____, witnesses, this
22 _____ day of _____, 19__.

23 (Seal)

Notary Public, or other officer
authorized to take and certify
acknowledgements and administer
oaths

28 A self-proved will shall constitute proof of due execution
29 of such instrument as required by section six hundred thirty-
30 three point two hundred ninety-three (633.293) and may be
31 admitted to probate without testimony of witnesses.

32 Sec. 3. Section six hundred thirty-three point four hun-
33 dred thirty-seven (633.437), Code 1977, is amended by strik-
34 ing the section and inserting in lieu thereof the following:

35 633.437 CONTRARY PROVISION AS TO ABATEMENT.

1 1. When provisions of the will, trust or other testamen-
2 tary instrument of the decedent provide explicitly for an
3 order of abatement contrary to the provisions of section six
4 hundred thirty-three point four hundred thirty-six (633.436)
5 of the Code, the provisions of the will or other testamentary
6 instrument shall determine the order of abatement.

7 2. Except as provided in subsection one (1) of this
8 section, if the provisions of the will, the testamentary plan,
9 or the express or the implied purpose of the devise would
10 be defeated by the order of abatement as provided in section
11 six hundred thirty-three point four hundred thirty-six
12 (633.436) of the Code, then upon application to the court
13 by a fiduciary or a distributee, and after notice to all
14 interested parties, the court shall determine the order for
15 abatement of the shares of distributees in such other manner
16 as may be found necessary to give effect to the intention
17 of the testator. In order to change the order of abatement
18 as provided in section six hundred thirty-three point four
19 hundred thirty-six (633.436) of the Code, it will be necessary
20 for the court to find it clear and convincing that the
21 provisions of the will, the testamentary plan, or the express
22 or implied purpose of the devise would be defeated by the
23 order of abatement stated in section six hundred thirty-three
24 point four hundred thirty-six (633.436) of the Code.

25 Sec. 4. Section six hundred thirty-three point four hun-
26 dred seventy-nine (633.479), Code 1977, is amended by add-
27 ing the following new unnumbered paragraph:

28 NEW UNNUMBERED PARAGRAPH. An order approving the final
29 report and discharging the personal representative shall not
30 be required if all distributees otherwise entitled to notice
31 are adults, under no legal disability, have signed waivers
32 of notice as provided in section six hundred thirty-three
33 point four hundred seventy-eight (633.478) of the Code, have
34 signed statements of consent agreeing that the prayer of the
35 final report shall constitute an order approving the final

1 report and discharging the personal representative, and if
 2 such statements of consent are dated not more than thirty
 3 days prior to the date of the final report. In such instances
 4 final order shall not be required and the prayer of the final
 5 report shall be considered as granted and shall have the same
 6 force and effect as an order of discharge of the personal
 7 representative and an order approving the final report. The
 8 clerk shall comply with section six hundred thirty-three point
 9 four hundred eighty (633.480) of the Code with respect to
 10 issuing a change of title.

11 Sec. 5. Section six hundred thirty-three point seven
 12 hundred four (633.704), subsection two (2), paragraph a, Code
 13 1977, is amended to read as follows:

14 a. TIME OF FILING. The disclaimer instrument shall be
 15 filed within ~~six~~ nine months after the date of ~~the second~~
 16 ~~publication of the notice to creditors~~ death of the decedent
 17 or prior to the approval of the final report, whichever occurs
 18 first, or within ~~six~~ nine months after the death of the donee
 19 of the power, as the case may be, or if the taker of the
 20 property or interest is not then finally ascertained or ~~his~~
 21 the taker's interest has not become indefeasibly fixed both
 22 in quality and in quantity, then not later than two months
 23 after the event when the taker has become finally ascertained
 24 and ~~his~~ the taker's interest has become indefeasibly fixed
 25 both in quality and in quantity.

26 Sec. 6. This Act is effective January 1, 1978.

27 EXPLANATION

28 1. The purpose of section 1 of this bill is to make it
 29 clear that if section 633.118 of the Code is exercised, it
 30 will satisfy the requirements of a guardian ad litem and will
 31 not require the appointment of an attorney and the appointment
 32 of a guardian ad litem.

33 2. Section 2 of this bill provides a change in the language
 34 of the affidavit concerning a self-proved will.

35 3. Section 3 of this bill attempts to clarify that a

1 testator may provide for a form of abatement different from
2 the disposition in section 633.436 of the Code.

3 4. Section 4 of this bill provides for a limited situa-
4 tion where a final report from the court would not be re-
5 quired to close an estate.

6 5. The purpose of section 5 of this bill is to make Iowa
7 law similar to the federal estate tax law in that the
8 disclaimer instrument is due within nine months after date
9 of death.

SENATE FILE 280

H-4196

1 Amend Senate File 280 as amended and passed by
2 the Senate as follows:
3 1. Page 4, line 3 by inserting after the word
4 "report" the words ", and if compliance with the
5 provisions of sections four hundred twenty two point
6 twenty-seven (422.27), four hundred fifty point
7 fifty-eight (450.58), and six hundred thirty-three
8 point four hundred seventy-four (633.474), of the
9 Code, have been fulfilled and receipts and certi-
10 ficates are on file".

H-4196 FILED *Adopted 5/20* BY NIELSEN of Polk
MAY 16, 1977 *(p. 2518)*

House Amendment to Senate File 280

S-3709

1 Amend Senate File 280 as amended and passed by
2 the Senate as follows:
3 1. Page 4, line 3 by inserting after the word
4 "report" the words ", and if compliance with the
5 provisions of sections four hundred twenty-two point
6 twenty-seven (422.27), four hundred fifty point
7 fifty-eight (450.58), and six hundred thirty-three
8 point four hundred seventy-four (633.474), of the
9 Code, have been fulfilled and receipts and certi-
10 ficates are on file".

S-3709 Filed RECEIVED FROM THE HOUSE
MAY 20, 1977
SENATE CONCURRED *(p. 1791)*

SENATE FILE 280

AN ACT

RELATING TO THE DISPOSITION OF A DECEDENT'S PROPERTY.

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

Section 1. Section six hundred thirty-three point one hundred eighteen (633.118), Code 1977, is amended to read as follows:

633.118 ATTORNEY APPOINTED FOR PERSONS NOT REPRESENTED.

At or before the hearing in any proceedings under this Code, where all the parties interested in the estate are required to be notified thereof, the court, in its discretion, may appoint some competent attorney to represent any interested person who has been served with notice and who is otherwise unrepresented. The appointment of an attorney under the provisions of this section, shall be in lieu of appointment of a guardian ad litem provided for in the rules of civil procedure.

Sec. 2. Section six hundred thirty-three point two hundred seventy-nine (633.279), Code 1977, is amended by striking subsection two (2) and inserting in lieu thereof the following:

2. SELF-PROVED WILL. An attested will may be made self-proved at the time of its execution, or at any subsequent date, by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before a person authorized to administer oaths and take acknowledgments under the laws of this state, and evidenced by such person's certificate, under seal, attached or annexed to the will, in form and content substantially as follows:

Affidavit

State of _____ ss
County of _____

We, the undersigned, _____, _____ and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, declare to the undersigned authority that said instrument is the testator's will and that the testator willingly signed and executed such instrument, or expressly directed another to sign the same in the presence of the witnesses, as a free and voluntary act for the purposes therein expressed; that said witnesses, and each of them, declare to the undersigned authority that such will was executed and acknowledged by the testator as the testator's will in their presence and that they, in the testator's presence, at the testator's request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the date of the date of such will; and that the testator, at the time of the execution of such instrument, was of full age and of sound mind and that the witnesses were sixteen years of age or older and otherwise competent to be witnesses.

Testator

Witness

Witness

Subscribed, sworn and acknowledged before me by _____, the testator; and subscribed and sworn before me by _____ and _____, witnesses, this _____ day of _____, 19__.

(Seal)

Notary Public, or other officer authorized to take and certify acknowledgements and administer oaths

A self-proved will shall constitute proof of due execution

of such instrument as required by section six hundred thirty-three point two hundred ninety-three (633.293) of the Code and may be admitted to probate without testimony of witnesses.

Sec. 3. Section six hundred thirty-three point four hundred thirty-seven (633.437), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

633.437 CONTRARY PROVISION AS TO ABATEMENT.

1. When provisions of the will, trust or other testamentary instrument of the decedent provide explicitly for an order of abatement contrary to the provisions of section six hundred thirty-three point four hundred thirty-six (633.436) of the Code, the provisions of the will or other testamentary instrument shall determine the order of abatement.

2. Except as provided in subsection one (1) of this section, if the provisions of the will, the testamentary plan, or the express or the implied purpose of the devise would be defeated by the order of abatement as provided in section six hundred thirty-three point four hundred thirty-six (633.436) of the Code, then upon application to the court by a fiduciary or a distributee, and after notice to all interested parties, the court shall determine the order for abatement of the shares of distributees in such other manner as may be found necessary to give effect to the intention of the testator. In order to change the order of abatement as provided in section six hundred thirty-three point four hundred thirty-six (633.436) of the Code, it will be necessary for the court to find it clear and convincing that the provisions of the will, the testamentary plan, or the express or implied purpose of the devise would be defeated by the order of abatement stated in section six hundred thirty-three point four hundred thirty-six (633.436) of the Code.

Sec. 4. Section six hundred thirty-three point four hundred seventy-nine (633.479), Code 1977, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. An order approving the final

report and discharging the personal representative shall not be required if all distributees otherwise entitled to notice are adults, under no legal disability, have signed waivers of notice as provided in section six hundred thirty-three point four hundred seventy-eight (633.478) of the Code, have signed statements of consent agreeing that the prayer of the final report shall constitute an order approving the final report and discharging the personal representative, and if such statements of consent are dated not more than thirty days prior to the date of the final report, and if compliance with the provisions of sections four hundred twenty-two point twenty-seven (422.27), four hundred fifty point fifty-eight (450.58), and six hundred thirty-three point four hundred seventy-four (633.474), of the Code, have been fulfilled and receipts and certificates are on file. In such instances final order shall not be required and the prayer of the final report shall be considered as granted and shall have the same force and effect as an order of discharge of the personal representative and an order approving the final report. The clerk shall comply with section six hundred thirty-three point four hundred eighty (633.480) of the Code with respect to issuing a change of title.

Sec. 5. Section six hundred thirty-three point seven hundred four (633.704), subsection two (2), paragraph a, Code 1977, is amended to read as follows:

a. TIME OF FILING. The disclaimer instrument shall be filed within six nine months after the date of ~~the second publication of the notice to creditors~~ death of the decedent or prior to the approval of the final report, whichever occurs first, or within six nine months after the death of the donee of the power, as the case may be, or if the taker of the property or interest is not then finally ascertained or ~~his~~ the taker's interest has not become indefeasibly fixed both in quality and in quantity, then not later than two months after the event when the taker has become finally ascertained

and ~~his~~ the taker's interest has become indefeasibly fixed both in quality and in quantity.

Sec. 6. This Act is effective January 1, 1978.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 280, Sixty-seventh General Assembly.

STEVEN C. CROSS
Secretary of the Senate

Approved 7/9, 1977

ROBERT D. RAY
Governor