

The Constitution 3/1/84

Senate File 2132

Judiciary and Law Enforcement: Doderer, Chair, Schroeder and Tabor.

Amended per SF 28 & Do Pass 3/23 (p. 1247)

FILED FEB 6 1984

SENATE FILED 2132

BY COMMITTEE ON JUDICIARY

(FORMERLY SSB 2042)

Approved 2/6 (p. 327)

Passed Senate, Date 2-9-84 (p. 378) Passed House, Date 3-29-84 (p. 1501)

Vote: Ayes 40 Nays 0 Vote: Ayes 94 Nays 5

Approved Vote 9 Nov 18, 1984

motion to reconsider (p. 379) w/d 2/29 (p. 576)

Repassed Senate 4-3-84 (p. 1264)

124-0

A BILL FOR

1 An Act relating to intestate succession with respect to the
 2 share of the surviving spouse and limitations on inheritance
 3 by remote heirs of others than the surviving spouse.

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

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S. 2132

1 Section 1. Section 633.211, unnumbered paragraph 1, Code
2 1983, is amended to read as follows:

3 If the decedent dies intestate leaving a surviving spouse
4 and leaving issue who are not all the issue of the surviving
5 spouse, the surviving spouse shall receive the following
6 share:

7 Sec. 2. Section 633.212, unnumbered paragraph 1, Code
8 1983, is amended to read as follows:

9 If the decedent dies intestate leaving a surviving spouse
10 and leaving no issue or leaving issue who are all the issue
11 of the surviving spouse, the surviving spouse shall receive
12 the following share:

13 Sec. 3. Section 633.219, Code 1983, is amended to read
14 as follows:

15 633.219 SHARE OF OTHERS THAN SURVIVING SPOUSE. The portion
16 of the estate remaining after the payment of the debts and
17 charges, and not distributed to the surviving spouse, ~~as~~
18 ~~provided-in-this-code~~, or if there is no surviving spouse,
19 then the remaining estate after payment of the debts and
20 charges, ~~shall-descend~~ descends and shall be distributed as
21 follows:

22 1. In equal shares to the decedent's children, unless
23 one or more of them is dead, in which case the issue of ~~such~~
24 the deceased child shall inherit his-or-her the child's share
25 ~~in-accordance-with-the-rules-herein-prescribed~~, in the same
26 manner as though ~~said~~ the child had outlived ~~his~~ the child's
27 parents.

28 2. If there is no person to take under subsection 1 of
29 ~~this-section~~, then to the surviving parents in equal shares;
30 and if either parent is dead, the portion that would have
31 gone to ~~such~~ the deceased parent, ~~-shall-go~~ goes to the
32 survivor.

33 3. If there is no person to take under either subsection
34 1 or 2 ~~of-this-section~~, the portion uninherited ~~shall-go~~ goes
35 to ~~such~~ the persons as who would have been entitled to take

1 if the parents of the decedent had outlived the intestate
 2 and had died in possession and ownership of the portion thus
 3 falling to their share, and so on, through their ascending
 4 ancestors up to and including the great grandparents of the
 5 decedent and their heirs issue.

6 4. If heirs are not thus found under subsection 1, 2 or
 7 ~~3 of this section~~, the portion uninherited ~~shall go~~ goes to
 8 the spouse of the intestate; and if the spouse is dead, then
 9 to the heirs of the spouse, according to like rules. If such
 10 the intestate has had more than one spouse who either died
 11 or survived in lawful wedlock, it shall be equally divided
 12 between the one who is living and the heirs of those who are
 13 dead, or between the heirs of all such heirs, according to
 14 like rules, taking per stirpes and not per capita.

15 5. If, after the application of subsections 1, 2, 3 and
 16 4 there is left undistributed any portion of the estate which
 17 was to be distributed on either the paternal or maternal side,
 18 the entire portion so undistributed passes to the person
 19 or persons on the other side as determined under subsection
 20 2 or 3.

21 6. If there is no person who qualifies under either
 22 subsection 1, 2, 3, ~~or 4 or 5 of this section~~, the intestate
 23 property ~~shall escheat~~ escheats to the state of Iowa.

24 Sec. 4. Section 633.436, unnumbered paragraph 1, Code
 25 1983, is amended to read as follows:

26 Except as provided in section 633.211 or 633.212, shares
 27 of the distributees ~~shall~~ abate, for the payment of debts
 28 and charges, federal and state estate taxes, legacies, the
 29 shares of children born or adopted after the making of a will,
 30 or the share of the surviving spouse who elects to take against
 31 the will, without any preference or priority as between real
 32 and personal property, in the following order:

33 Sec. 5. This Act applies to estates of decedents dying
 34 intestate on or after its effective date. With respect to
 35 estates of decedents dying intestate before the effective

1 date of this Act, rights shall be governed by the law as it
2 existed prior to that date.

3 EXPLANATION

4 Sections 1 and 2 of this bill amend the provisions govern-
5 ing intestate succession with respect to a surviving spouse
6 when the decedent leaves issue. If the decedent's issue are
7 not all also issue of the surviving spouse, section 633.211
8 applies. If the decedent's issue are all also issue of the
9 surviving spouse, section 633.212 applies. The effect of
10 the change is to provide a greater share to the surviving
11 spouse when all of the decedent's issue are also issue of
12 the surviving spouse. Section 4 provides a conforming
13 amendment.

14 Section 3 of the bill amends provisions governing intestate
15 succession with respect to others than the surviving spouse.
16 It cuts off unlimited rights of inheritance now available
17 under section 633.219.

18 The bill takes effect July 1 following its enactment and
19 applies to estates of decedents dying intestate on or after
20 that date.

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SENATE FILE 2132

H-5828

1 Amend Senate File 2132 as passed by the Senate
2 as follows:
3 1. By striking everything after the enacting
4 clause and inserting in lieu thereof the following:
5 "Section 1. Section 633.211, subsection 1, Code
6 1983, is amended to read as follows:
7 1. ~~One-third~~ One-half in value of all the legal
8 or equitable estates in real property possessed by
9 the decedent at any time during the marriage, which
10 have not been sold on execution or other judicial
11 sale, and to which the surviving spouse has ~~made no~~
12 ~~relinquishment of~~ not relinquished his or her right.
13 Sec. 2. Section 633.211, subsection 3, Code 1983,
14 is amended to read as follows:
15 3. ~~One-third~~ One-half of all other personal
16 property of the decedent which is not necessary for
17 the payment of debts and charges.
18 Sec. 3. Section 633.212, subsection 3, Code 1983,
19 is amended to read as follows:
20 3. ~~One-half of all~~ All other real and personal
21 property of the decedent which is not necessary for
22 the payment of debts and charges.
23 Sec. 4. Section 633.212, subsections 4 and 5,
24 Code 1983, are amended by striking the subsections."

H-5828 FILED MARCH 23, 1984 BY COMMITTEE ON JUDICIARY AND LAW
Adopted as amended by 5841 3/29 (p 1501) ENFORCEMENT

SENATE FILE 2132

H-5841

1 Amend House amendment H-5828 to Senate File 2132
2 as passed by the Senate as follows:
3 1. Page 1, line 12, by striking the words "his
4 or her right." and inserting in lieu thereof the
5 following: "his the spouse's right. However, the
6 spouse may petition the court to receive less than
7 one-half, but not less than one-third, of the value
8 of the estates identified in this subsection."
9 2. Page 1, line 17, by inserting after the word
10 "charges." the following: "However, the spouse may
11 petition the court to receive less than one-half,
12 but not less than one-third, of the property identified
13 in this subsection."

H-5841 FILED MARCH 26, 1984 BY SCHROEDER of Pottawattamie
Adopted 3/29 (p 1501)

HOUSE AMENDMENT TO SENATE FILE 2132

-5726

1 Amend-Senate File 2132-as passed by the Senate
2 as follows:

3 1. By striking everything after the enacting
4 clause and inserting in lieu thereof the following:

5 "Section 1. Section 633.211, subsection 1, Code
6 1983, is amended to read as follows: .

7 1. ~~One-third~~ One-half in value of all the legal
8 or equitable estates in real property possessed by
9 the decedent at any time during the marriage, which
10 have not been sold on execution or other judicial
11 sale, and to which the surviving spouse has made no
12 ~~relinquishment of~~ not relinquished his the spouse's
13 right. However, the spouse may petition the court
14 to receive less than one-half, but not less than one-
15 third, of the value of the estates identified in this
16 subsection.

17 Sec. 2. Section 633.211, subsection 3, Code 1983,
18 is amended to read as follows:

19 3. ~~One-third~~ One-half of all other personal
20 property of the decedent which is not necessary for
21 the payment of debts and charges. However, the spouse
22 may petition the court to receive less than one-half,
23 but not less than one-third, of the property identified
24 in this subsection.

25 Sec. 3. Section 633.212, subsection 3, Code 1983,
26 is amended to read as follows:

27 3. ~~One-half of all~~ All other real and personal
28 property of the decedent which is not necessary for
29 the payment of debts and charges.

30 Sec. 4. Section 633.212, subsections 4 and 5,
31 Code 1983, are amended by striking the subsections."

S-5726 FILED
APRIL 2, 1984

RECEIVED FROM THE HOUSE

Senate concurred 4/3 (p. 1264)

GOVERNOR'S VETO MESSAGES

May 18, 1984

The Honorable Mary Jane Odell
Secretary of State
State Capitol Building
L O C A L

Dear Madam Secretary:

Senate File 2132, "An Act relating to intestate succession with respect to the share of the surviving spouse and limitations on inheritance by remote heirs of others than the surviving spouse," is hereby disapproved and transmitted to you in accordance with Article III, Section 16. of the Constitution of the State of Iowa.

Senate File 2132 amends Section 633.211 by raising the amount that a surviving spouse with children can inherit from a deceased spouse who had no will from one-third of the estate after debts to one-half of the estate after debts. This bill also amends Section 633.212 by increasing the share a surviving spouse with no children inherits from a deceased spouse with no will from one-half of the net estate to the entire estate.

In passing this will, the legislature recognized the modern trend that a marriage is an equal partnership and that a primary responsibility of married persons is to assure that adequate provisions are made for their surviving spouses. I have supported and continue to support increasing the amounts that surviving spouses inherit as provided in this bill. Unfortunately, an amendment was made to this bill

6 will be controlled by the legislative
serious legislative encroachment into
management and labor specialists in
I continue to monitor our progress on

the review committee and review
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oversight committee, employees and
urse for adjusting the proposed

rove of these items in accordance with
the Constitution of the State of Iowa. All
pproved as of this date.

Very truly yours,
TERRY E. BRANSTAD
Governor

MESSAGES

May 18, 1984

ate succession with respect to the share
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and transmitted to you in accordance
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an amendment was made to this bill

which will jeopardize estate planning and risk an increase in the amount of federal estate tax that members of the family of a deceased spouse will pay. Because of the severe flaws in this amendment, I am reluctantly disapproving this bill in its entirety.

The problematic amendment to the bill, which was added to Sections 633.211(1) and 633.211(3) reads as follows:

However, the spouse may petition the court to receive less than one-half, but not less than one-third of the value of the estates identified in this subsection.

Specifically, there are two problems with this amendment. The first problem is that this amendment may prohibit surviving spouses from minimizing federal estate tax by restricting the use of the disclaimer law. Both the federal and Iowa law permit any person to disclaim or refuse to take all or part of an inheritance. This has proven to be an effective tool for families to use in minimizing federal estate and Iowa inheritance tax. For example, in certain circumstances a family could save federal estate tax if the surviving spouse was permitted to disclaim property and pass it to the children, thereby reducing the value of the surviving spouse's estate. Disclaiming reduces the size of the estate of the surviving spouse because under federal state disclaimer laws, if property is disclaimed, it is never part of the surviving spouse's estate.

The bill as amended states that the surviving spouse who falls within Section 633.211 could not disclaim one-third of the estate. Such a concept of not allowing an individual to disclaim the entire estate inherited has never appeared in the Iowa law and, to the best of the knowledge of the chair of the Probate, Property and Trust Law Committee of the Iowa State Bar Association, is not present in the law of any state.

Under present law, a surviving spouse pays no federal estate tax on the amount inherited from the deceased spouse. However, the one-third passing to the surviving spouse and which the surviving spouse could not disclaim according to this bill, would become part of the surviving spouse's estate thereby making the surviving spouse's estate larger. The result would be that the tax rate would be greater when the surviving spouse eventually dies and passes this second estate on to children. Therefore, in many situations, it would be advisable for the surviving spouse to pass on the one-third of the estate directly to children which is a measure this bill precludes.

The second problem presented by this amendment could actually be of even graver financial consequence to a family from paying federal estate tax. The amendment in the bill allows a spouse to petition to receive less than one-half but no less than one-third of the estate. There is no time limit specified in which a spouse must petition the court to reduce the estate. To be eligible for the federal marital deduction, the share the surviving spouse receives must be determined within six months after the deceased spouse's death (Section 2056 (b)(3) of the Internal Revenue Code).

If the marital deduction of the surviving spouse cannot be determined within six months of the death of the deceased spouse, the IRS may rule that the marital

deduction will be limited to one-third of the estate rather than one-half of the estate. Therefore, families who had hoped to reduce federal estate tax by this bill based upon fifty percent of the estate passing to the surviving spouse rather than one-third of the estate passing to the surviving spouse would not receive the anticipated benefit. In addition, it may also be possible that due to the uncertainty of the amount that the surviving spouse takes, the Internal Revenue Service could disallow the entire marital deduction thereby greatly increasing the amount of federal estate tax the family would have to pay. Only property which passes to the surviving spouse is exempt from estate tax. Therefore, if a marital deduction is disallowed, the amount subject to tax is greatly increased.

The Internal Revenue Service will not release a position on a tax question unless their answer is needed to address a particular case. Therefore, there is no way of knowing the position of the Internal Revenue Service regarding these questions.

The potential loss for a particular estate if the entire marital deduction were not allowed could be a serious financial blow. In weighing the potential loss of an entire marital deduction against the seventeen and two-thirds percent gain in marital deduction (the difference between one-third and one-half of an estate) which would be achieved by this bill, the prudent course is to eliminate the greater loss by disapproving this bill. If this bill were signed, it would be one year before a corrective bill by the next legislative session could become law. It would be callous to impose a year of uncertainty, tax problems and fear of even greater financial losses upon some Iowans who lose their spouses during the 1985 fiscal year. I cannot in good conscience sign such a defective bill, even though I strongly favor increasing surviving spouses' intestate shares.

I am requesting that the Iowa State Bar Association and the Iowa Department of Revenue assist my office in drafting legislation which will increase the surviving spouses' estates from one-third to the one-half under Section 633.211 and from one-half to all of the estate under Section 633.212 in such a manner that will eliminate the tax problems of the present bill.

Both the Iowa State Bar Association and the Iowa Department of Revenue have assured me that they will support such a bill and will assist me in strongly urging its passage next year.

For the reasons mentioned above, I hereby respectfully disapprove of Senate File 2132.

Very truly yours,
TERRY E. BRANSTAD
Governor

May 18, 1984

The Honorable Mary Jane Odell
Secretary of State
State Capitol Building
L O C A L

Dear Madam Secretary:

Senate File 2237, an act relating to the qualifications of magistrates, is hereby disapproved in accordance with Article III, Section 16, of the Iowa Constitution.

Section 1 of this bill modified a section of the Iowa Code relating to magistrates and provides a change in the magistrate terms.

Section 2 replaces existing law on the qualifications of magistrates, and this section eliminates the existing biannual selection process once selected to stand for retention every two years.

With regard to the matter of having magistrates, the bill is technically flawed in that it does not include a provision for the failure of a magistrate to be retained in office under section 602.6201, subparagraph 4, in the definition of "magistrate" which includes "the failure of a district judge to be re-elected."

With regard to the qualification matter, pre-appointment a person must be a resident of the state for the completion of the initial term of office plus a year, and a lawyer is not required, however, a lawyer is required in the selection process.

My principal concern with this bill is that it eliminates the preference for a lawyer which provides that a lawyer is preferred in the selection process. This preference for a legally trained magistrate is a necessary part of the elimination of the old Justice of the Peace system to assure a more unified and fairer court system.

Most people are introduced to our judicial system through the court, for some minor infraction of the law. In our present court system, we must do all that we can to assure that the law is treated wisely and fairly. We need to select as magistrates only those who are qualified. A person with a legal education is best qualified to make important legal decisions on the magistrates' formal legal training.

Under our present system many magistrates are dedicated and perform their responsibilities with great care. Adjustments are made to our legal system, we are not taking a step backward in which it takes us. By eliminating the preference for a lawyer we would actually be taking a step backward in the development of a possible legal system for the people of this state.

Sec. 4. Section 633.212, subsections 4 and 5, Code 1983, are amended by striking the subsections.

SENATE FILE 2132

AN ACT

RELATING TO INTERSTATE SUCCESSION WITH RESPECT TO THE SHARE OF THE SURVIVING SPOUSE AND LIMITATIONS ON INHERITANCE BY REMOTE HEIRS OF OTHERS THAN THE SURVIVING SPOUSE.

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

Section 1. Section 633.211, subsection 1, Code 1983, is amended to read as follows:

1. ~~One-third~~ One-half in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage, which have not been sold on execution or other judicial sale, and to which the surviving spouse has ~~made no relinquishment of~~ not relinquished ~~his~~ the spouse's right. However, the spouse may petition the court to receive less than one-half, but not less than one-third, of the value of the estates identified in this subsection.

Sec. 2. Section 633.211, subsection 3, Code 1983, is amended to read as follows:

3. ~~One-third~~ One-half of all other personal property of the decedent which is not necessary for the payment of debts and charges. However, the spouse may petition the court to receive less than one-half, but not less than one-third, of the property identified in this subsection.

Sec. 3. Section 633.212, subsection 3, Code 1983, is amended to read as follows:

3. ~~One-half of all~~ All other real and personal property of the decedent which is not necessary for the payment of debts and charges.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2132, Seventieth General Assembly.

W. J. ...
Approved 5/18, 1984

K. MARIE THAYER
Secretary of the Senate

TERRY E. BRANSTAD
Governor