Senate File 2138

Judiciary and Law Enforcement: Schroeder, Chair; Parker and Tabor.

Do Pass 3/16 (p. 1115)

FILED FEB 6 1984

SENATE FILE 2138

BY COMMITTEE ON JUDICIARY

(FORMERLY SSB 2053)

Approved 2/6 (p. 328)

Passed Senate, Date 2-13-84 (p. 395) Passed House, Date 3-27-84 (p. 1324)

Vote: Ayes 43 Nays 3 Vote: Ayes 95 Nays 0

Approved April 13, 1984 (p. 1574)

A BILL FOR

An Act relating to the time within which to contest wills, file claims, make spousal elections and take certain other actions with respect to decedents' estates.

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

S 2138

Section 1. Section 633.230, unnumbered paragraph 3, Code 1983, is amended to read as follows:

To All Persons Interested in the Estate of .....
.....
..... deceased, who died on or about
....., 19.....

Sec. 2. Section 633.230, unnumbered paragraph 5, Code 1983, is amended to read as follows:

Notice is hereby given that all persons indebted to ~~said~~ the estate are requested to make immediate payment to the undersigned, and creditors having claims against ~~said~~ the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed within ~~six~~ four months from the second publication of this notice (unless otherwise allowed or paid) ~~such~~ a claim ~~shall~~ is thereafter ~~be~~ forever barred.

Sec. 3. Section 633.237, Code 1983, is amended to read as follows:

633.237 PRESUMPTION THAT SURVIVING SPOUSE ELECTS TO TAKE UNDER WILL. ~~Where~~ If a voluntary election to take or refuse to take under a will has not been filed by a surviving spouse within two months of the date of the second publication of notice of admission of the will to probate, and the surviving spouse is not the executor of ~~such~~ the will, ~~it-shall-be-the duty-of~~ the executor ~~to~~ shall cause to be served a written notice upon the surviving spouse in the manner directed by the court, advising the surviving spouse that the will of ~~such~~ the decedent has been admitted to probate, stating the name of the court where the will was admitted and the date when the will was admitted to probate, and notifying ~~such~~ the spouse that unless within four months after service of ~~such~~ the notice, ~~he~~ the spouse files an election in writing with the clerk of ~~such~~ that court refusing to take under the ~~provisions-of-such~~ will, ~~such-surviving~~ the spouse shall take under ~~the-provisions-of~~ the will~~,-provided-that-if~~. If the

surviving spouse files ~~his~~ an election to take under the will at any time the requirements of this section for serving notice are ~~thereby~~ waived~~,-provided,-further,-that-if~~. If within the ~~before-described~~ period of four months an affidavit is filed setting forth that ~~such~~ the surviving spouse is incapable to make ~~such~~ the election, the court shall determine whether there shall be an election to take against the will in accordance with section 633.238~~,-provided-further,-that the~~. The court on application may, prior to the expiration of ~~such~~ the period of four months, for cause shown, enter an order extending the time for making ~~such~~ the election.

PARAGRAPH DIVIDED. If ~~such~~ the surviving spouse ~~shall be~~ is an executor of the will and fails, within ~~six~~ four months after the date of the second publication of notice of admission of the will to probate, to file with the clerk of the court an election to refuse to take under ~~the-provisions of~~ the will of the deceased, it shall be conclusively presumed that ~~such~~ the survivor consents to the provisions of the will and elects to take ~~thereunder,-provided,-further,-that~~ under it. However, the court on application may, prior to the expiration of ~~such~~ the period of ~~six~~ four months, on cause shown, enter an order extending the time for making ~~such~~ the election.

Sec. 4. Section 633.241, Code 1983, is amended to read as follows:

633.241 TIME FOR ELECTION TO OCCUPY HOMESTEAD. ~~In-case~~ If the surviving spouse does not make an election to occupy the homestead and file it with the clerk within ~~six~~ four months from the date of the second publication of the notice to creditors, it shall be conclusively presumed that ~~such~~ the surviving spouse waives the right to make ~~such~~ the election. The court on application may, prior to the expiration of ~~such~~ the period of ~~six~~ four months, for cause shown, enter an order extending the time for making ~~such~~ the election.

1 Sec. 5. Section 633.247, Code 1983, is amended to read
2 as follows:
3 633.247 SETTING OFF SHARE OF SURVIVING SPOUSE WHEN ELECTING
4 TO TAKE AGAINST THE WILL--TIME LIMIT. The share of the
5 surviving spouse under section 633.236 may be set off by the
6 mutual consent of all parties in interest, or by referees
7 appointed by the court. An application to have it set off
8 by referees shall be made in writing within ~~six~~ four months
9 after the second publication of notice of the probate of the
10 will, or within one month after the election to take against
11 the will is filed with the clerk, whichever is the longer.
12 The application must describe the land in which the share
13 is claimed, and pray for the appointment of referees to set
14 it off.
15 Sec. 6. Section 633.304, Code 1983, is amended to read
16 as follows:
17 633.304 NOTICE OF PROBATE OF WILL WITH ADMINISTRATION.
18 On admission of a will to probate, the executor shall, as
19 soon as letters are issued, cause to be published once each
20 week for two consecutive weeks in a daily or weekly newspaper
21 of general circulation published in the county in which the
22 estate is pending, a notice of admission of the will to probate
23 and of the appointment of the executor, in which shall be
24 included a notice that any action to set aside the probate
25 of ~~said~~ the will must be brought within ~~six~~ four months from
26 the date of the second publication of ~~said~~ the notice or
27 thereafter be forever barred, and ~~there~~ in which shall ~~also~~
28 be included ~~therein~~ a notice to debtors to make payment, and
29 to creditors having claims against ~~said~~ the estate to file
30 them with the clerk within ~~six~~ four months from the second
31 publication of ~~said~~ the notice, or thereafter be forever
32 barred.
33 ~~Such~~ The notice shall be substantially in the following
34 form:
35 Notice of Probate of Will, of Appointment of Executor,

1 and Notice to Creditors
2 In the District Court of Iowa
3 in and for ..... County. Probate No. .....
4 In the Estate of ....., Deceased
5 To All Persons Interested in the Estate
6 of ....., Deceased, who died on or about .....,
7 19.....:
8 You are hereby notified that on the ..... day
9 of ....., 19....., the last will and testament of
10 ....., deceased, bearing date of the ..... day
11 of .....,
12 19....., was admitted to probate in the above named court
13 and that ..... was appointed executor of ~~said~~ the estate.
14 Any action to set aside ~~said~~ the will must be brought in the
15 district court of said county within ~~six~~ four months from
16 the date of the second publication of this notice, or
17 thereafter be forever barred.
18 Notice is further given that all persons indebted to ~~said~~
19 the estate are requested to make immediate payment to the
20 undersigned, and creditors having claims against ~~said~~ the
21 estate shall file them with the clerk of the above named
22 district court, as provided by law, duly authenticated, for
23 allowance~~;~~, and unless so filed within ~~six~~ four months from
24 the second publication of this notice (unless otherwise allowed
25 or paid) ~~such~~ a claim ~~shall~~ is thereafter ~~be~~ forever barred.
26 Dated this ..... day of ....., 19.....
27 .....
28 Executor of ~~said~~ estate
29 .....
30 Address
31 .....
32 Attorney for ~~said~~ executor
33 .....
34 Address
35 Date of second publication

..... day of ....., 19.....

(Date to be inserted by publisher)

~~This section is applicable to wills admitted to probate on or after July 1, 1975.~~

Sec. 7. Section 633.305, Code 1983, is amended to read as follows:

633.305 NOTICE ~~WHERE~~ IF NO ADMINISTRATION. On admission of a will to probate without administration of the estate, and upon advanced payment of the costs ~~thereof~~ by the proponent, the clerk shall cause to be published, in the manner prescribed in the preceding section, a notice of the admission of the will to probate in which shall be included a notice that any action to set aside ~~said~~ the will must be brought within ~~six~~ four months from the date of the second publication of ~~said~~ the notice or thereafter be barred.

~~Such~~ The notice shall be substantially in the following form:

Notice of Proof of Will
Without Administration

In the District Court of Iowa
in and for ..... County. Probate No. .....
In the Estate of ....., Deceased To All Persons Interested in the Estate of ....., Deceased, who died on or about ....., 19.....:

You are hereby notified that on the ..... day of ....., 19....., the last will and testament of ....., deceased, bearing date of the ..... day of ....., 19....., was admitted to probate in the above named court and there will be no present administration of the estate. Any action to set aside ~~said~~ the will must be brought in the district court of said county within ~~six~~ four months from the date of the second publication of this notice or thereafter be forever barred.

Dated this ..... day of ....., 19.....

.....

Clerk of the district court

.....

Attorney for ~~said~~ estate

.....

Address

Date of second publication

..... day of ....., 19.....

(Date to be inserted by publisher)

~~This section is applicable to wills admitted to probate on or after July 1, 1975.~~

Sec. 8. Section 633.309, Code 1983, is amended to read as follows:

633.309 TIME WITHIN WHICH ACTION MUST BE COMMENCED. An action to contest or set aside the probate of a will must be commenced in the court in which the will was admitted to probate within ~~six~~ four months from the date of second publication of notice of admission of ~~such~~ the will to probate ~~and not thereafter. This section is applicable to wills admitted to probate on or after July 1, 1975.~~

Sec. 9. Section 633.410, Code 1983, is amended to read as follows:

633.410 LIMITATION ON FILING CLAIMS AGAINST DECEDENT'S ESTATE. All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, ~~shall be~~ are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within ~~six~~ four months after the date of the second publication of the notice to creditors~~, provided, however, that~~. However, the personal representative may waive ~~such~~ this limitation on filing~~, and this provision shall~~. This section does not bar claimants entitled to equitable relief due to peculiar circumstances.

Sec. 10. Section 633.412, Code 1983, is amended to read as follows:

633.412 WHEN CLAIM NOT AFFECTED BY STATUTE OF ~~LIMITATION~~ LIMITATIONS. ~~No~~ A claim shall not be barred by the ~~statutes of limitation which~~ statute of limitations if the claim was not barred at the time of the decedent's death~~, if the claim shall have been~~ and is filed against the decedent's estate within ~~six~~ four months from the date of the decedent's death.

Sec. 11. Section 633.427, Code 1983, is amended to read as follows:

633.427 PAYMENT OF CONTINGENT CLAIMS BY DISTRIBUTEES--CONTRIBUTION. If a contingent claim ~~shall have~~ has been filed and allowed against an estate and all the assets of the estate ~~shall~~ have been distributed, and the claim ~~shall thereafter become~~ becomes absolute, the creditor ~~shall have~~ has the right to recover ~~thereon~~ on the claim against those distributees whose distributive shares have been increased ~~by reason of the fact that~~ because the amount of ~~said~~ the claim as finally determined was not paid prior to final distribution, ~~provided~~ if an action ~~therefor shall be~~ for recovery is commenced within ~~six~~ four months after the claim becomes absolute. Such distributees ~~shall be~~ are jointly and severally liable, but ~~no~~ a distributee ~~shall be~~ is not liable for an amount exceeding the amount of the estate or fund so distributed to ~~him~~ that distributee. If more than one distributee is liable to the creditor, the creditor shall make parties to the action all such distributees who can be reached by process. By its judgment, the court shall determine the amount of the liability of each of the distributees as between themselves, but if any ~~be~~ distributee is insolvent or unable to pay ~~his~~ that distributee's proportion, or is beyond the reach of process, the others, to the extent of their respective liabilities, ~~shall~~ are nevertheless ~~be~~ liable to the creditor for the whole amount of ~~his~~ the creditor's debt. If any person liable for the debt fails to pay ~~his~~ that person's just proportion to the creditors, ~~he shall be~~ the person is liable to indemnify all who, by reason of ~~such~~ the failure

1 ~~on his part~~, have paid more than their just proportion of
2 the debt, the indemnity to be recovered in the same action
3 or in separate actions.
4 Sec. 12. Section 633.433, Code 1983, is amended to read
5 as follows:
6 633.433 PAYMENT OF DEBTS AND CHARGES BEFORE EXPIRATION
7 OF ~~SIX~~ FOUR MONTHS' PERIOD. As soon as the personal
8 representative is possessed of sufficient means over and above
9 the other costs of administration, ~~he~~ the personal represen-
10 tative shall pay any allowance made by the court for the
11 surviving spouse and children of the decedent, and may pay
12 the expenses of funeral, ~~and~~ burial and last illness. Prior
13 to the expiration of ~~six~~ four months after the date of the
14 second publication of notice to creditors, the personal
15 representative shall pay ~~such~~ other debts and charges against
16 the estate as the court ~~shall order~~ orders, and the court
17 may require bond or other security to be given by the creditor
18 to refund such part of ~~such~~ the payment as may be necessary
19 to make payment in accordance with ~~the provisions of~~ this
20 ~~Code~~ code. All payments made by the personal representative
21 without order of court ~~shall be~~ are at ~~his~~ the personal
22 representative's own peril.
23 Sec. 13. Section 633.434, Code 1983, is amended to read
24 as follows:
25 633.434 PAYMENT OF DEBTS AND CHARGES AFTER EXPIRATION
26 OF ~~SIX~~ FOUR MONTHS' PERIOD. Upon the expiration of ~~six~~ four
27 months after the date of the second publication of notice
28 to creditors, the personal representative shall ~~proceed to~~
29 pay the debts and charges against the estate in accordance
30 with ~~the provisions of~~ this ~~Code~~ code. If it appears at any
31 time that the estate is or may be insolvent, that there are
32 insufficient funds on hand, or that there is other good and
33 sufficient cause, the personal representative may report that
34 fact to the court and apply for any order that ~~he~~ the personal
35 representative deems necessary ~~in connection therewith~~.

Sec. 14. Section 633.516, Code 1983, is amended to read as follows:

633.516 RIGHTS OF ABSENTEE BARRED--SALE BY SPOUSE. ~~Such an~~ An order establishing the death of an absentee ~~shall~~ forever ~~bar~~ bars the rights of homestead and distributive share of the absentee, and ~~his~~ the absentee's interest in and to any real estate owned or held by the spouse of ~~such~~ the absentee, and in which ~~said~~ the spouse may have a legal or equitable interest. Conveyance of any such real estate by ~~such~~ the spouse, after ~~six~~ four months ~~or more~~ from date of publication of second notice of the appointment of a personal representative, ~~shall be~~ is free and clear of any claim or right of homestead or distributive share on the part of ~~such~~ the absentee.

Sec. 15. Section 635.13, Code 1983, is amended to read as follows:

635.13 NOTICE--CLAIMS. The executor or administrator of a small estate may publish notice pursuant to section 633.230 or section 633.304. Creditors having claims against the estate must file them with the clerk within ~~six~~ four months from the second publication of the notice. The notice ~~shall have~~ has the same force and effect as in chapter 633.

Sec. 16. This Act applies to estates for which administration is granted on or after its effective date and to wills admitted to probate on or after that effective date.

EXPLANATION

This bill would reduce the time permitted for contesting wills, filing claims against decedents' estates and certain spousal elections, from six months to four months. The bill would bring the Iowa Probate Code in line with the majority of states. The bill also requires published notices to include the date of death.

The bill takes effect July 1 following its enactment and applies to estates for which administration is granted on or after that date and to wills admitted to probate on or after that date.

SENATE FILE 2138

AN ACT

RELATING TO THE TIME WITHIN WHICH TO CONTEST WILLS, FILE CLAIMS, MAKE SPOUSAL ELECTIONS AND TAKE CERTAIN OTHER ACTIONS WITH RESPECT TO DECEDENTS' ESTATES.

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

Section 1. Section 633.230, unnumbered paragraph 3, Code 1983, is amended to read as follows:

To All Persons Interested in the Estate of .... deceased, who died on or about ..... 19 .....:

Sec. 2. Section 633.230, unnumbered paragraph 5, Code 1983, is amended to read as follows:

Notice is hereby given that all persons indebted to ~~said~~ the estate are requested to make immediate payment to the undersigned, and creditors having claims against ~~said~~ the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for allowance, and unless so filed within ~~six~~ four months from the second publication of this notice (unless otherwise allowed or paid) ~~such~~ a claim ~~shall~~ is thereafter ~~be~~ forever barred.

Sec. 3. Section 633.237, Code 1983, is amended to read as follows:

633.237 PRESUMPTION THAT SURVIVING SPOUSE ELECTS TO TAKE UNDER WILL. ~~Where~~ If a voluntary election to take or refuse

to take under a will has not been filed by a surviving spouse within two months of the date of the second publication of notice of admission of the will to probate, and the surviving spouse is not the executor of ~~such~~ the will, ~~it shall be the duty of~~ the executor ~~to~~ shall cause to be served a written notice upon the surviving spouse in the manner directed by the court, advising the surviving spouse that the will of ~~such~~ the decedent has been admitted to probate, stating the name of the court where the will was admitted and the date when the will was admitted to probate, and notifying ~~such~~ the spouse that unless within four months after service of ~~such~~ the notice, ~~he~~ the spouse files an election in writing with the clerk of ~~such~~ that court refusing to take under the ~~provisions of such~~ will, ~~such surviving~~ the spouse shall take under ~~the provisions of~~ the will; ~~provided that if~~. If the surviving spouse files ~~his~~ an election to take under the will at any time the requirements of this section for serving notice are ~~thereby~~ waived; ~~provided, further, that if~~. If within the ~~before described~~ period of four months an affidavit is filed setting forth that ~~such~~ the surviving spouse is incapable to make ~~such~~ the election, the court shall determine whether there shall be an election to take against the will in accordance with section 633.238; ~~provided further, that the~~. The court on application may, prior to the expiration of ~~such~~ the period of four months, for cause shown, enter an order extending the time for making ~~such~~ the election.

PARAGRAPH DIVIDED. If ~~such~~ the surviving spouse ~~shall be~~ is an executor of the will and fails, within ~~six~~ four months after the date of the second publication of notice of admission of the will to probate, to file with the clerk of the court an election to refuse to take under ~~the provisions of~~ the will of the deceased, it shall be conclusively presumed that ~~such~~ the survivor consents to the provisions of the will and elects to take ~~thereunder; provided, further, that~~ under it. However, the court on application may, prior to the

S.F. 2138

expiration of ~~such~~ the period of ~~six~~ four months, on cause shown, enter an order extending the time for making ~~such~~ the election.

Sec. 4. Section 633.241, Code 1983, is amended to read as follows:

633.241 TIME FOR ELECTION TO OCCUPY HOMESTEAD. ~~In case~~ If the surviving spouse does not make an election to occupy the homestead and file it with the clerk within ~~six~~ four months from the date of the second publication of the notice to creditors, it shall be conclusively presumed that ~~such~~ the surviving spouse waives the right to make ~~such~~ the election. The court on application may, prior to the expiration of ~~such~~ the period of ~~six~~ four months, for cause shown, enter an order extending the time for making ~~such~~ the election.

Sec. 5. Section 633.247, Code 1983, is amended to read as follows:

633.247 SETTING OFF SHARE OF SURVIVING SPOUSE WHEN ELECTING TO TAKE AGAINST THE WILL--TIME LIMIT. The share of the surviving spouse under section 633.236 may be set off by the mutual consent of all parties in interest, or by referees appointed by the court. An application to have it set off by referees shall be made in writing within ~~six~~ four months after the second publication of notice of the probate of the will, or within one month after the election to take against the will is filed with the clerk, whichever is the longer. The application must describe the land in which the share is claimed, and pray for the appointment of referees to set it off.

Sec. 6. Section 633.304, Code 1983, is amended to read as follows:

633.304 NOTICE OF PROBATE OF WILL WITH ADMINISTRATION. On admission of a will to probate, the executor shall, as soon as letters are issued, cause to be published once each week for two consecutive weeks in a daily or weekly newspaper

of general circulation published in the county in which the estate is pending, a notice of admission of the will to probate and of the appointment of the executor, in which shall be included a notice that any action to set aside the probate of ~~said~~ the will must be brought within ~~six~~ four months from the date of the second publication of ~~said~~ the notice or thereafter be forever barred, and ~~there~~ in which shall ~~also~~ be included ~~therein~~ a notice to debtors to make payment, and to creditors having claims against ~~said~~ the estate to file them with the clerk within ~~six~~ four months from the second publication of ~~said~~ the notice, or thereafter be forever barred.

~~Such~~ The notice shall be substantially in the following form:

Notice of Probate of Will, of Appointment of Executor, and Notice to Creditors
In the District Court of Iowa
in and for ..... County. Probate No. .....
In the Estate of ....., Deceased
To All Persons Interested in the Estate of .....,
Deceased, who died on or about ....., 19....:

You are hereby notified that on the ..... day of ....., 19....., the last will and testament of ....., deceased, bearing date of the ..... day of ....., 19....., was admitted to probate in the above named court and that ..... was appointed executor of ~~said~~ the estate. Any action to set aside ~~said~~ the will must be brought in the district court of said county within ~~six~~ four months from the date of the second publication of this notice, or thereafter be forever barred.

Notice is further given that all persons indebted to ~~said~~ the estate are requested to make immediate payment to the undersigned, and creditors having claims against ~~said~~ the estate shall file them with the clerk of the above named district court, as provided by law, duly authenticated, for

allowance~~s~~, and unless so filed within ~~six~~ four months from the second publication of this notice (unless otherwise allowed or paid) ~~such~~ a claim ~~shall~~ is thereafter be forever barred.

Dated this ..... day of ....., 19.....

.....

Executor of ~~said~~ estate

.....

Address

.....

Attorney for ~~said~~ executor

.....

Address

Date of second publication

..... day of ....., 19.....

(Date to be inserted by publisher)

~~This section is applicable to wills admitted to probate on or after July 1, 1976.~~

Sec. 7. Section 633.305, Code 1983, is amended to read as follows:

633.305 NOTICE ~~WHERE~~ IF NO ADMINISTRATION. On admission of a will to probate without administration of the estate, and upon advanced payment of the costs ~~thereof~~ by the proponent, the clerk shall cause to be published, in the manner prescribed in the preceding section, a notice of the admission of the will to probate in which shall be included a notice that any action to set aside ~~said~~ the will must be brought within ~~six~~ four months from the date of the second publication of ~~said~~ the notice or thereafter be barred.

~~Such~~ The notice shall be substantially in the following form:

Notice of Proof of Will

Without Administration

In the District Court of Iowa

in and for ..... County. Probate No. .....

In the Estate of ....., Deceased To All Persons Interested in the Estate of ....., Deceased, who died on or about ..... 19.....:

You are hereby notified that on the ..... day of ....., 19....., the last will and testament of ....., deceased, bearing date of the ..... day of ....., 19....., was admitted to probate in the above named court and there will be no present administration of the estate. Any action to set aside ~~said~~ the will must be brought in the district court of said county within ~~six~~ four months from the date of the second publication of this notice or thereafter be forever barred.

Dated this ..... day of ....., 19.....

.....

Clerk of the district court

.....

Attorney for ~~said~~ estate

.....

Address

Date of second publication

..... day of ....., 19.....

(Date to be inserted by publisher)

~~This section is applicable to wills admitted to probate on or after July 1, 1976.~~

Sec. 8. Section 633.309, Code 1983, is amended to read as follows:

633.309 TIME WITHIN WHICH ACTION MUST BE COMMENCED. An action to contest or set aside the probate of a will must be commenced in the court in which the will was admitted to probate within ~~six~~ four months from the date of second publication of notice of admission of ~~such~~ the will to probate ~~and not thereafter. This section is applicable to wills admitted to probate on or after July 1, 1976.~~

Sec. 9. Section 633.410, Code 1983, is amended to read as follows:

S.F. 2138

633.410 LIMITATION ON FILING CLAIMS AGAINST DECEDENT'S ESTATE. All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, ~~shall be~~ are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within ~~six~~ four months after the date of the second publication of the notice to creditors~~, provided, however, that~~. However, the personal representative may waive ~~such~~ this limitation on filing~~, and this provision shall~~. This section does not bar claimants entitled to equitable relief due to peculiar circumstances.

Sec. 10. Section 633.412, Code 1983, is amended to read as follows:

633.412 WHEN CLAIM NOT AFFECTED BY STATUTE OF ~~LIMITATION~~ LIMITATIONS. ~~No~~ A claim shall not be barred by the ~~statutes of limitation which~~ statute of limitations if the claim was not barred at the time of the decedent's death~~, if the claim shall have been~~ and is filed against the decedent's estate within ~~six~~ four months from the date of the decedent's death.

Sec. 11. Section 633.427, Code 1983, is amended to read as follows:

633.427 PAYMENT OF CONTINGENT CLAIMS BY DISTRIBUTEES--CONTRIBUTION. If a contingent claim ~~shall have~~ has been filed and allowed against an estate and all the assets of the estate ~~shall~~ have been distributed, and the claim ~~shall thereafter become~~ becomes absolute, the creditor ~~shall have~~ has the right to recover ~~thereon~~ on the claim against those distributees whose distributive shares have been increased ~~by reason of the fact that~~ because the amount of ~~said~~ the claim as finally determined was not paid prior to final distribution, ~~provided~~ if an action ~~therefor shall be~~ for recovery is commenced within ~~six~~ four months after the claim becomes absolute. Such distributees ~~shall be~~ are jointly and severally liable, but ~~no~~ a distributee ~~shall be~~ is not liable for an amount

exceeding the amount of the estate or fund so distributed to ~~him~~ that distributee. If more than one distributee is liable to the creditor, the creditor shall make parties to the action all such distributees who can be reached by process. By its judgment, the court shall determine the amount of the liability of each of the distributees as between themselves, but if any ~~be~~ distributee is insolvent or unable to pay ~~his~~ that distributee's proportion, or is beyond the reach of process, the others, to the extent of their respective liabilities, ~~shall~~ are nevertheless ~~be~~ liable to the creditor for the whole amount of ~~his~~ the creditor's debt. If any person liable for the debt fails to pay ~~his~~ that person's just proportion to the creditors, ~~he shall be~~ the person is liable to indemnify all who, by reason of ~~such~~ the failure ~~on his part~~, have paid more than their just proportion of the debt, the indemnity to be recovered in the same action or in separate actions.

Sec. 12. Section 633.433, Code 1983, is amended to read as follows:

633.433 PAYMENT OF DEBTS AND CHARGES BEFORE EXPIRATION OF ~~SIX~~ FOUR MONTHS' PERIOD. As soon as the personal representative is possessed of sufficient means over and above the other costs of administration, ~~he~~ the personal representative shall pay any allowance made by the court for the surviving spouse and children of the decedent, and may pay the expenses of funeral, ~~and~~ burial and last illness. Prior to the expiration of ~~six~~ four months after the date of the second publication of notice to creditors, the personal representative shall pay ~~such~~ other debts and charges against the estate as the court ~~shall order~~ orders, and the court may require bond or other security to be given by the creditor to refund such part of ~~such~~ the payment as may be necessary to make payment in accordance with ~~the provisions of~~ this ~~Code~~ code. All payments made by the personal representative without order of court ~~shall be~~ are at ~~his~~ the personal representative's own peril.

Sec. 13. Section 633.434, Code 1983, is amended to read as follows:

633.434 PAYMENT OF DEBTS AND CHARGES AFTER EXPIRATION OF ~~SIX~~ FOUR MONTHS' PERIOD. Upon the expiration of ~~six~~ four months after the date of the second publication of notice to creditors, the personal representative shall ~~proceed to~~ pay the debts and charges against the estate in accordance with ~~the provisions of~~ this ~~Code~~ code. If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand, or that there is other good and sufficient cause, the personal representative may report that fact to the court and apply for any order that ~~he~~ the personal representative deems necessary ~~in connection therewith~~.

Sec. 14. Section 633.516, Code 1983, is amended to read as follows:

633.516 RIGHTS OF ABSENTEE BARRED--SALE BY SPOUSE. ~~Such an~~ An order establishing the death of an absentee ~~shall~~ forever ~~bar~~ bars the rights of homestead and distributive share of the absentee, and ~~his~~ the absentee's interest in and to any real estate owned or held by the spouse of ~~such~~ the absentee, and in which ~~said~~ the spouse may have a legal or equitable interest. Conveyance of any such real estate by ~~such~~ the spouse, after ~~six~~ four months ~~or more~~ from date of publication of second notice of the appointment of a personal representative, ~~shall be~~ is free and clear of any claim or right of homestead or distributive share on the part of ~~such~~ the absentee.

Sec. 15. Section 635.13, Code 1983, is amended to read as follows:

635.13 NOTICE--CLAIMS. The executor or administrator of a small estate may publish notice pursuant to section 633.230 or section 633.304. Creditors having claims against the estate must file them with the clerk within ~~six~~ four months from the second publication of the notice. The notice ~~shall have~~ has the same force and effect as in chapter 633.

Sec. 16. This Act applies to estates for which administration is granted on or after its effective date and to wills admitted to probate on or after that effective date.

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 2138, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved April 13, 1984

TERRY E. BRANSTAD
Governor

S.F. 2138