

SENATE FILE 378

BY COMMITTEE ON JUDICIARY  
*Approved 3/4/85 (p. 983)*

FILED MAR 4 1985

Passed Senate, Date 3-8-85 (p. 622) Passed House, Date 3-14-85 (p. 814)  
Vote: Ayes 48 Nays 0 Vote: Ayes 99 Nays 0  
Approved March 25, 1985 (p. 1004)

### A BILL FOR

1 An Act relating to the share of the surviving spouse in  
2 intestate succession.

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

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

SF 378

1 Section 1. Section 633.211, Code 1985, is amended to read  
2 as follows:

3 633.211 SHARE OF SURVIVING SPOUSE IF DECEDENT LEFT NO  
4 ISSUE OR LEFT ISSUE ALL OF WHOM ARE ISSUE OF SURVIVING SPOUSE.

5 If the decedent dies intestate leaving a surviving spouse  
6 and leaving no issue or leaving issue all of whom are the  
7 issue of the surviving spouse, the surviving spouse shall  
8 receive the following share:

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

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

17 3. ~~One-third-of-all~~ All other personal property of the  
18 decedent which is not necessary for the payment of debts and  
19 charges.

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

29 Sec. 2. Section 633.212, Code 1985, is amended to read as  
30 follows:

31 633.212 SHARE OF SURVIVING SPOUSE WHERE IF DECEDENT LEFT  
32 NO ISSUE SOME OF WHOM ARE NOT ISSUE OF SURVIVING SPOUSE.

33 If the decedent dies intestate leaving a surviving spouse  
34 and leaving no issue some of whom are not the issue of the  
35 surviving spouse, the surviving spouse shall receive the

1 following share:

2 1. One-half in value of all the legal or equitable estates  
3 in real property possessed by the decedent at any time during  
4 the marriage, which have not been sold on execution or by  
5 other judicial sale, and to which the surviving spouse has  
6 made no relinquishment of right.

7 2. All personal property that, at the time of death, was  
8 in the hands of the decedent as the head of a family, exempt  
9 from execution.

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

12 4. If the property received by the surviving spouse under  
13 subsections 1, 2 and 3 of this section is not equal in value  
14 to the sum of fifty thousand dollars, then so much additional  
15 of any remaining homestead interest and of the nonexempt  
16 remaining real and personal property of the decedent remaining  
17 that is subject to payment of debts and charges against the  
18 decedent's estate, after payment of the debts and charges  
19 ~~against the estate, as may be necessary~~, even to the extent of  
20 the entire whole of the net estate, as necessary to make the  
21 amount of fifty thousand dollars.

22 ~~5. -- So much additional of the remaining real and personal~~  
23 ~~property belonging to the decedent as is necessary to make the~~  
24 ~~entire share of the surviving spouse, including the property~~  
25 ~~received under subsections 1, 2 and 3 of this section, equal~~  
26 ~~in value to the aforesaid sum of fifty thousand dollars plus~~  
27 ~~one-half of the net value of the estate over and above the~~  
28 ~~said sum of fifty thousand dollars and the value of the exempt~~  
29 ~~personal property.~~

30 Sec. 3. Section 633.436, unnumbered paragraph 1, Code  
31 1985, is amended to read as follows:

32 Except as provided in section 633.211 and 633.212, shares  
33 of the distributees shall abate, for the payment of debts and  
34 charges, federal and state estate taxes, legacies, the shares  
35 of children born or adopted after the making of a will, or the

1 share of the surviving spouse who elects to take against the  
2 will, without any preference or priority as between real and  
3 personal property, in the following order:

4 Sec. 4. This Act applies to the estates of decedents dying  
5 on or after the effective date of this Act.

6 EXPLANATION

7 This bill increases the share of the surviving spouse in  
8 intestate situations. The share of the surviving spouse is  
9 the entire estate when either no issue survives or, if issue  
10 survive, all of the issue are also the issue of the surviving  
11 spouse. In cases where not all of the issue are issue of the  
12 surviving spouse, the one-third share of the real and  
13 nonexempt personal property is increased to a one-half share  
14 and the \$50,000 minimum is retained.

15 The bill applies to the estates of decedents dying on or  
16 after the effective date of the bill.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

SSB 230

Judiciary

HOUSE/SENATE FILE 378

*NWD  
SF 378*

BY (PROPOSED COMMITTEE ON  
JUDICIARY AND LAW ENFORCE-  
MENT AND COMMITTEE ON  
JUDICIARY BILL)

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

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

Approved \_\_\_\_\_

### A BILL FOR

1 An Act relating to the share of the surviving spouse in  
2 intestate succession.

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

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Section 1. Section 633.211, Code 1985, is amended to read  
2 as follows:

3 633.211 SHARE OF SURVIVING SPOUSE IF DECEDENT LEFT NO  
4 ISSUE OR LEFT ISSUE ALL OF WHOM ARE ISSUE OF SURVIVING SPOUSE.

5 If the decedent dies intestate leaving a surviving spouse  
6 and leaving no issue or leaving issue all of whom are the  
7 issue of the surviving spouse, the surviving spouse shall  
8 receive the following share:

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

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

17 3. ~~One-third-of-all~~ All other personal property of the  
18 decedent which is not necessary for the payment of debts and  
19 charges.

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

29 Sec. 2. Section 633.212, Code 1985, is amended to read as  
30 follows:

31 633.212 SHARE OF SURVIVING SPOUSE WHERE IF DECEDENT LEFT  
32 NO ISSUE SOME OF WHOM ARE NOT ISSUE OF SURVIVING SPOUSE.

33 If the decedent dies intestate leaving a surviving spouse  
34 and leaving no issue some of whom are not the issue of the  
35 surviving spouse, the surviving spouse shall receive the

1 share of the surviving spouse who elects to take against the  
2 will, without any preference or priority as between real and  
3 personal property, in the following order:

4 Sec. 4. This Act applies to the estates of decedents dying  
5 on or after the effective date of this Act.

6 EXPLANATION

7 This bill increases the share of the surviving spouse in  
8 intestate situations. The share of the surviving spouse is  
9 the entire estate when either no issue survives or, if issue  
10 survive, all of the issue are also the issue of the surviving  
11 spouse. In cases where not all of the issue are issue of the  
12 surviving spouse, the one-third share of the real and  
13 nonexempt personal property is increased to a one-half share  
14 and the \$50,000 minimum is retained.

15 The bill applies to the estates of decedents dying on or  
16 after the effective date of the bill.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

1 following share:

2 1. One-half in value of all the legal or equitable estates  
3 in real property possessed by the decedent at any time during  
4 the marriage, which have not been sold on execution or by  
5 other judicial sale, and to which the surviving spouse has  
6 made no relinquishment of right.

7 2. All personal property that, at the time of death, was  
8 in the hands of the decedent as the head of a family, exempt  
9 from execution.

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

12 4. If the property received by the surviving spouse under  
13 subsections 1, 2 and 3 of this section is not equal in value  
14 to the sum of fifty thousand dollars, then so much additional  
15 of any remaining homestead interest and of the nonexempt  
16 remaining real and personal property of the decedent remaining  
17 that is subject to payment of debts and charges against the  
18 decedent's estate, after payment of the debts and charges  
19 ~~against-the-estate, as may be necessary~~, even to the extent of  
20 the entire whole of the net estate, as necessary to make the  
21 amount of fifty thousand dollars.

22 ~~5.--So-much-additional-of-the-remaining-real-and-personal~~  
23 ~~property-belonging-to-the-decedent-as-is-necessary-to-make-the~~  
24 ~~entire-share-of-the-surviving-spouse, including-the-property~~  
25 ~~received-under-subsections-1, 3 and 4-of-this-section, equal~~  
26 ~~in-value-to-the-aforesaid-sum-of-fifty-thousand-dollars-plus~~  
27 ~~one-half-of-the-net-value-of-the-estate-over-and-above-the~~  
28 ~~said-sum-of-fifty-thousand-dollars-and-the-value-of-the-exempt~~  
29 ~~personal-property.~~

30 Sec. 3. Section 633.436, unnumbered paragraph 1, Code  
31 1985, is amended to read as follows:

32 Except as provided in section 633.211 and 633.212, shares  
33 of the distributees shall abate, for the payment of debts and  
34 charges, federal and state estate taxes, legacies, the shares  
35 of children born or adopted after the making of a will, or the

SENATE FILE 378

AN ACT

RELATING TO THE SHARE OF THE SURVIVING SPOUSE IN INTESTATE SUC-  
CESSION.

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

Section 1. Section 633.211, Code 1985, is amended to read  
as follows:

633.211 SHARE OF SURVIVING SPOUSE IF DECEDENT LEFT NO  
ISSUE OR LEFT ISSUE ALL OF WHOM ARE ISSUE OF SURVIVING SPOUSE.

If the decedent dies intestate leaving a surviving spouse  
and leaving no issue or leaving issue all of whom are the  
issue of the surviving spouse, the surviving spouse shall  
receive the following share:

1. ~~One-third-in~~ All the 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 by other judicial sale, and to which the  
surviving spouse has made no relinquishment of right.

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

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

~~4--if-the-property-received-by-the-surviving-spouse-under  
subsections 1-2-and 3 of this-section-is-not-equal-in-value  
to-the-sum-of-fifty-thousand-dollars-then-so-much-additional  
of-any-remaining-homestead-interest-and-of-the-remaining-real  
and-personal-property-of-the-decedent-that-is-subject-to  
payment-of-debts-and-charges-against-the-decedent's-estate,  
after-payment-of-such-debts-and-charges-even-to-the-extent-of  
the-whole-of-the-net-estate-as-may-be-necessary-to-make-the  
amount-of-fifty-thousand-dollars.~~

Sec. 2. Section 633.212, Code 1985, is amended to read as  
follows:

633.212 SHARE OF SURVIVING SPOUSE WHERE IF DECEDENT LEFT  
NO ISSUE SOME OF WHOM ARE NOT ISSUE OF SURVIVING SPOUSE.

If the decedent dies intestate leaving a surviving spouse  
and leaving no issue some of whom are not the issue of the  
surviving spouse, the surviving spouse shall receive the  
following share:

1. 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 by  
other judicial sale, and to which the surviving spouse has  
made no relinquishment of right.

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

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

4. If the property received by the surviving spouse under  
subsections 1, 2 and 3 of this section is not equal in value  
to the sum of fifty thousand dollars, then so much additional  
of any remaining homestead interest and of the ~~nonexempt~~  
remaining real and personal property of the decedent remaining  
that is subject to payment of debts and charges against the  
decedent's estate, after payment of the debts and charges  
against the estate, as may be necessary, even to the extent of  
the entire whole of the net estate, as necessary to make the  
amount of fifty thousand dollars.

~~5--So-much-additional-of-the-remaining-real-and-personal  
property-belonging-to-the-decedent-as-is-necessary-to-make-the  
entire-share-of-the-surviving-spouse-including-the-property  
received-under-subsections 1-3 and 4-of-this-section-equal  
in-value-to-the-aforesaid-sum-of-fifty-thousand-dollars-plus  
one-half-of-the-net-value-of-the-estate-over-and-above-the  
said-sum-of-fifty-thousand-dollars-and-the-value-of-the-exempt  
personal-property.~~

Sec. 3. Section 633.436, unnumbered paragraph 1, Code 1985, is amended to read as follows:

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

Sec. 4. This Act applies to the estates of decedents dying on or after the effective date of this Act.

---

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 378, Seventy-first General Assembly.

---

K. MARIE THAYER  
Secretary of the Senate

Approved March 25, 1985

---

TERRY E. BRANSTAD  
Governor