

Judiciary 3/24, Pass 6/21
Senate File 442
Ramsey, Chairman
DeKoster
Kennedy

Bill 1/14/74, Pass 1/15
St. - Jud. Law Enforce, 1/23/74, Pass 3/14
Senate File 412
Oakley, Chairman
Nielsen
Woods
Logue
Howell

SENATE FILE 442

FILED MAR 28 1974

By RILEY
(Hill)

Passed Senate, Date 1-18-74 Passed House, Date 4-15-74 (1734)
Vote: Ayes 45 Nays 0 Vote: Ayes 88 Nays 0
Approved 4-25-74

A BILL FOR

- 1 An Act relating to the Iowa Probate Code.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 Section 1. Section six hundred thirty-three point three
2 (633.3), unnumbered paragraph one (1), Code 1973, is amended
3 to read as follows:

4 When used in this Code, unless otherwise required by the
5 context or another division of this Code, the following words
6 and phrases shall be construed as follows:

7 Sec. 2. Section six hundred thirty-three point forty
8 (633.40), subsection four (4), Code 1973, is amended to read
9 as follows:

10 4. NOTICE OTHERWISE PROVIDED. In lieu of the foregoing
11 the notice may direct each interested party ~~to appear in the~~
12 ~~court in which the proceedings are pending, and~~ to file his
13 objections thereto in writing, ~~of any he has, within twenty~~
14 ~~days after the day such notice is served upon him and that~~
15 unless he does so appear and if any, on or before a date
16 certain, to be set out in the notice and to be not less than
17 twenty days after the day the notice is served upon him and
18 that unless he does so file his objections in writing that
19 he will be forever barred from making any objections thereto.
20 Said notice may be served upon each interested party either
21 by ordinary United States mail or personally in compliance
22 with the rules of civil procedure. In the event objections
23 thereto are timely filed, the court shall fix the time and
24 place of the hearing for the judicial determination of the
25 issues raised.

26 Sec. 3. Section six hundred thirty-three point two hun-
27 dred eleven (633.211), subsection four (4), Code 1973, is
28 amended to read as follows:

29 4. If the property received by the surviving spouse un-
30 der subsections 1, 2 and 3 of this section is not equal in
31 value to the sum of twenty-five thousand dollars, then so
32 much additional of any remaining homestead interest and of
33 the remaining real and personal property of the decedent that
34 is subject to payment of debts and charges against the
35 decedent's estate, after payment of such debts and charges,

1 even to the extent of the whole of the net estate, as may
 2 be necessary to make the amount of twenty-five thousand dol-
 3 lars.

4 Sec. 4. Section six hundred thirty-three point two hun-
 5 dred twelve (633.212), subsection four (4), Code 1973, is
 6 amended to read as follows:

7 4. If the property received by the surviving spouse un-
 8 der subsections 1 and 3 of this section is not equal in value
 9 to the sum of twenty-five thousand dollars, then so much
 10 additional of any remaining homestead interest and of the
 11 nonexempt real and personal property of the decedent remaining
 12 after payment of the debts and charges against the estate,
 13 as may be necessary, even to the extent of the entire net
 14 estate, to make the amount of twenty-five thousand dollars.

15 Sec. 5. Section six hundred thirty-three point two hun-
 16 dred seventy-eight (633.278), Code 1973, is amended to read
 17 as follows:

18 633.278 DEVISE OF ENCUMBERED PROPERTY. When any property
 19 subject to a mortgage or, other lien or security interest
 20 is specifically devised, the devisee shall take such property
 21 so devised subject to such mortgage or, other lien or security
 22 interest, unless the will provides expressly or by necessary
 23 implication that such mortgage or, other lien or security
 24 interest be otherwise paid. If there is a testamentary
 25 direction to discharge such mortgage or, other lien or security
 26 interest, the rules of abatement specified in section 633.436
 27 shall be applied. ~~The term "mortgage or other lien" as used~~
 28 ~~in this section shall not include a pledge of personal~~
 29 ~~property.~~

30 Sec. 6. Section six hundred thirty-three point three hun-
 31 dred eighty-nine (633.389), Code 1973, is amended to read
 32 as follows:

33 633.389 NOTICE AND HEARING ON SALE, MORTGAGE, EXCHANGE,
 34 PLEDGE OR LEASE OF PROPERTY. Upon the filing of the petition,
 35 ~~the court shall fix the time and place of hearing of the~~

1 ~~petition, and prescribe the time and manner of service of~~
2 ~~the notice of such hearing~~ unless notice is waived in writing,
3 ~~notice of hearing in accordance with section six hundred~~
4 ~~thirty-three point forty (633.40) of the Code, shall be served~~
5 on all persons interested in such property, provided, however,
6 that as to personal property and as to the lease of real
7 property not specifically devised, for a period of not to
8 exceed one year, the court may, in its discretion, hear the
9 petition without notice. In those instances where notice
10 is required, the notice shall state briefly the nature of
11 the application. At the hearing and upon satisfactory proof,
12 the court may order the sale, mortgage, exchange, pledge or
13 lease of the property described, or any part thereof, at such
14 price and upon such terms and conditions as the court may
15 authorize. For the purposes of this section, the term "all
16 persons interested" shall include only distributees in the
17 estate and persons who have requested notice as provided by
18 this Code.

19 Sec. 7. Section six hundred thirty-three point four hun-
20 dred seventy-eight (633.478), Code 1973, is amended to read
21 as follows:

22 633.478 NOTICE OF APPLICATION FOR DISCHARGE. ~~Unless~~
23 ~~notice be waived in writing, no~~ No personal representative
24 shall be discharged from further duty or responsibility upon
25 final settlement until notice of hearing on his final report
26 or of an application for discharge shall have been served
27 upon all persons interested ~~at such time and in such manner~~
28 ~~as the court may prescribe by an order made before or after~~
29 ~~the filing of the final report, in accordance with section~~
30 ~~six hundred thirty-three point forty (633.40) of the Code,~~
31 ~~unless such notice is waived. An order prescribing notice~~
32 ~~may be made before or after the filing of the final report.~~

33 Sec. 8. Section six hundred thirty-three point six hun-
34 dred seventy-seven (633.677), Code 1973, is amended to read
35 as follows:

1 633.677 ACCOUNTING TO WARD--NOTICE OF HEARING. Upon the
2 termination of a conservatorship, the conservator shall pay
3 the costs of administration, and render a full and complete
4 accounting to the ward or his personal representative and
5 to the court. Notice of hearing on the final report of a
6 conservator shall be served on the ward or his personal
7 representative, in accordance with section six hundred thirty-
8 three point forty (633.40) of the Code, unless such notice
9 is waived, at such time and in such manner as the court may
10 prescribe. An order prescribing notice may be made before
11 or after the filing of the final report.

12 Sec. 9. Section six hundred thirty-three point seven
13 hundred two (633.702), Code 1973, is amended to read as fol-
14 lows:

15 633.702 NOTICE OF APPLICATION FOR DISCHARGE. ~~Unless~~
16 ~~notice is waived in writing, no~~ No final report of a trustee
17 of a trust pending in court shall be approved, and no such
18 trustee shall be discharged from further duty or responsibility
19 upon final settlement, until notice of his application for
20 discharge shall have been served upon all persons interested
21 ~~at such time and in such manner as the court may prescribe~~
22 ~~by an order made either before or after the filing of the~~
23 ~~final report of the trustee, in accordance with section six~~
24 ~~hundred thirty-three point forty (633.40) of the Code, unless~~
25 notice is waived. An order prescribing notice may be made
26 before or after the filing of the final report.

27 Sec. 10. Section six hundred thirty-three point seven
28 hundred four (633.704), subsection one (1), unnumbered para-
29 graph one (1), Code 1973, is amended to read as follows:

30 No person, including a person designated to take pursuant
31 to a power of appointment, shall be required to take as a
32 distributee, or otherwise, under the laws of Iowa, and any
33 person may disclaim in whole or in part, the succession to
34 any property, real or personal, or interest therein, including
35 a power of appointment, by filing a written instrument within

1 the time and at the place hereinafter provided. The instrument
2 shall:

3 Sec. 11. Chapter six hundred thirty-three (633), division
4 three (III), part two (2), Code 1973, is amended by adding
5 the following new section:

6 NEW SECTION. POWER OF FIDUCIARY OR CUSTODIAN TO DEPOSIT
7 SECURITIES. Notwithstanding any other provision of law, any
8 fiduciary as defined in section six hundred thirty-three
9 point three (633.3), subsection seventeen (17), of the Code
10 holding securities in its fiduciary capacity, any bank, trust
11 company or private banker holding securities as a custodian
12 or managing agent, and any bank, trust company or private
13 banker holding securities as custodian for a fiduciary is
14 authorized to deposit or arrange for the deposit of such
15 securities in a clearing corporation, as defined in section
16 five hundred fifty-four point eight thousand one hundred two
17 (554.8102), subsection three (3) of the Code. When such
18 securities are so deposited, certificates representing
19 securities of the same class of the same issuer may be merged
20 and held in bulk in the name of the nominee of such clearing
21 corporation with any other such securities deposited in such
22 clearing corporation by any person regardless of the ownership
23 of such securities, and certificates of small denomination
24 may be merged into one or more certificates of larger
25 denomination. The records of such fiduciary and the records
26 of such bank, trust company or private banker acting as
27 custodian, as managing agent or as custodian for a fiduciary
28 shall at all times show the name of the party for whose account
29 the securities are so deposited. Title to such securities
30 may be transferred by bookkeeping entry on the books of such
31 clearing corporation without physical delivery of certificates
32 representing such securities. A bank, trust company or private
33 banker so depositing securities pursuant to this section shall
34 be subject to such rules and regulations as, in the case of
35 state-chartered institutions, the state superintendent of

1 banking and, in the case of national banking associations,
2 the comptroller of the currency may from time to time issue.
3 A bank, trust company or private banker acting as custodian
4 for a fiduciary shall, on demand by the fiduciary, certify
5 in writing to the fiduciary the securities so deposited by
6 such bank, trust company or private banker in such clearing
7 corporation for the account of such fiduciary. A fiduciary
8 shall, on demand by any party to a judicial proceeding for
9 the settlement of such fiduciary's account or on demand by
10 the attorney for such party, certify in writing to such party
11 the securities deposited by such fiduciary in such clearing
12 corporation for its account as such fiduciary.

13 This section shall apply to any fiduciary holding securi-
14 ties in its fiduciary capacity, and to any bank, trust company
15 or private banker holding securities as a custodian, managing
16 agent or custodian for a fiduciary, acting on the effective
17 date of this section or who thereafter may act regardless
18 of the date of the agreement, instrument or court order by
19 which it is appointed and regardless of whether or not such
20 fiduciary, custodian, managing agent or custodian for a
21 fiduciary owns capital stock of such clearing corporation.

22 EXPLANATION

23 This bill provides that notice of probate hearings may
24 be served without prior court order fixing the time and place
25 of hearing.

26 This bill also provides that the surviving spouse may elect
27 to take the homestead as part of her \$25,000 share.

28 This bill also provides for the uniform act permitting
29 fiduciaries to deposit security certificates with a custodian
30 and enables the substitution of business machine receipts
31 for the present form of stock certificates.

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