

MAR 5 1976

HOUSE FILE 1497

Place On Calendar

✓ House File 1497 - 4/13, Pass 5/21  
Judiciary  
Redmond,  
Chairperson  
DeKoster  
Hill of Polk

BY COMMITTEE ON JUDICIARY AND  
LAW ENFORCEMENT

Passed House, Date 4-7-76 (1684) Passed Senate, Date 5-24-76 (p. 2194)

Vote: Ayes 91 Nays 0 Vote: Ayes 40 Nays 0

Approved 6-23-76

*Motion to reconsider 5/24 (2194) prevailed 5/25  
Repassed Senate 5-25-76 (p. 2247)  
40-0*

## A BILL FOR

1 An Act making amendments to the probate laws by updating  
2 provisions relating to the appointment of a personal  
3 representative, providing for a change in the method of  
4 serving notice to file objections in a probate proceeding,  
5 providing for a change in the disposition of proceeds  
6 from a wrongful death action which are property of the  
7 estate, providing for self-proved wills, and providing for  
8 a disclaimer of inheritance when an administration is not  
9 pending.

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

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HOUSE FILE 1497

S-5883

1 Amend House File 1497 as follows:  
2 1. Page 3, by striking line 20 through page 4,  
3 line 2.

S-5883 FILED *Adopted 5/24 (2194)* BY COMMITTEE ON JUDICIARY  
MAY 21, 1976 *Reconsidered and* GENE W. GLENN, CHAIRPERSON  
*withdrawn 5/25 (2247)*

1 Section 1. Section five hundred ninety point one (590.1),  
2 unnumbered paragraph two (2), Code 1975, is amended to read  
3 as follows:

4 ~~In all instances prior to January 1, 1967~~ In all instances  
5 where more than five years have passed since the appointment  
6 of a personal representative or probate of a will without  
7 administration, where administrators have failed to publish  
8 notice of their appointment as required by section 633.230,  
9 and executors have failed to publish a notice of admission  
10 of the will to probate and their appointment as required by  
11 section 633.304 and six hundred thirty-three point three  
12 hundred five (633.305) of the Code, but have published a  
13 notice of appointment or notice of admission of the will to  
14 probate and of the appointment of the executor, such notice  
15 of appointment or notice of admission of the will to probate  
16 and of the appointment of the executor, is hereby legalized  
17 and shall have the same force and effect as though the same  
18 had been published as required.

19 Sec. 2. Section six hundred thirty-three point forty  
20 (633.40), subsection four (4), Code 1975, is amended to read  
21 as follows:

22 4. NOTICE OTHERWISE PROVIDED. In lieu of the foregoing  
23 the notice may direct each interested party to file his  
24 objections thereto in writing, if any, on or before a date  
25 certain, to be set out in the notice and to be not less than  
26 twenty days after the day the notice is served upon him and  
27 that unless he does so file his objections in writing that  
28 he will be forever barred from making any objections thereto.  
29 Said notice ~~may~~ shall be served upon each interested party  
30 ~~either by ordinary United States mail or~~ personally in  
31 compliance with the rules of civil procedure, or upon those  
32 parties not under legal disability by ordinary United States  
33 mail. In the event objections thereto are timely filed, the  
34 court shall fix the time and place of the hearing for the  
35 judicial determination of the issues raised.

1     Sec. 3. Chapter six hundred thirty-three (633), division  
2 six (VI), part two (2), Code 1975, is amended by adding the  
3 following new section:

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

12 State of \_\_\_\_\_  
13 County of \_\_\_\_\_ SS

14     Before me, the undersigned, on this day personally appeared  
15 \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_  
16 known to me to be the testator and the witnesses, respectively,  
17 whose names are signed to the attached or foregoing instrument  
18 and, all of these persons being by me first duly sworn,  
19 \_\_\_\_\_, the testator, declared to me and to the  
20 witnesses, in my presence, that said instrument is the  
21 testator's will and that the testator willingly signed and  
22 executed such instrument, or expressly directed another to  
23 sign the same for the testator, in the presence of said  
24 witnesses, as the testator's free and voluntary act for the  
25 purposes therein expressed; that said witnesses, and each  
26 of them, declared that such will was executed and acknowledged  
27 by the testator as the testator's will in their presence and  
28 that they, in the testator's presence, at the testator's  
29 request, and in the presence of each other, did subscribe  
30 their names thereto as attesting witnesses on the day of the  
31 date of such will; and that the testator, at the time of the  
32 execution of such instrument, was of full age and of sound  
33 mind and that the witnesses were sixteen years of age or older  
34 and otherwise competent to be witnesses.

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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. 4. Section six hundred thirty-three point three  
hundred thirty-six (633.336), Code 1975, is amended to read  
as follows:

633.336 DAMAGES FOR WRONGFUL DEATH. When a wrongful act  
produces death, damages recovered therefor shall be disposed  
of as personal property belonging to the estate of the  
deceased, ~~but-if-the-deceased-leaves-a-spouse,-child,-or~~  
~~parent,-it-shall-not-be-liable-for-the-payment-of-debts-of~~  
~~the-estate,-except-debts-and-charges-of-the-first,-second,-~~  
~~third-and-fifth-classes~~ however, if the damages include damages  
for loss of services and support of a deceased spouse and  
parent, such damages shall be apportioned by the court among  
the surviving spouse and children of the decedent in such  
manner as the court may deem equitable consistent with the  
loss of services and support sustained by the surviving spouse  
and children respectively. If the decedent leaves a spouse,

1 child or parent, damages for wrongful death shall not be  
2 subject to debts and charges of the decedent's estate.

3 Sec. 5. Section six hundred thirty-three point seven  
4 hundred four (633.704), Code 1975, is amended by striking  
5 the section and inserting in lieu thereof the following:

6 633.704 RIGHT TO DISCLAIM SUCCESSION.

7 1. RIGHT OF DISTRIBUTE. No person, including a person  
8 designated to take pursuant to a power of appointment, shall  
9 be required to take as a distributee, or otherwise, under  
10 the laws of Iowa, and any person may disclaim in whole or  
11 in part, the succession to any property, real or personal,  
12 or interest therein by filing a written instrument within  
13 the time and at the place hereinafter provided. The instrument  
14 shall:

15 a. Describe the property or part thereof or interest  
16 therein disclaimed.

17 b. Declare the disclaimer and the extent thereof and

18 c. Be signed and acknowledged by the disclaimant.

19 2. TIME AND PLACE OF FILING.

20 a. TIME OF FILING. The disclaimer instrument shall be  
21 filed within six months after the date of the second  
22 publication of the notice to creditors, or within six months  
23 after the death of the donee of the power, as the case may  
24 be, or if the taker of the property or interest is not then  
25 finally ascertained or his interest has not become indefeasibly  
26 fixed both in quality and in quantity, then not later than  
27 two months after the event when the taker has become finally  
28 ascertained and his interest has become indefeasibly fixed  
29 both in quality and in quantity.

30 b. PLACE OF FILING. The instrument shall be filed with  
31 the clerk in the county where the administration proceedings  
32 are pending. If no such administration proceedings are  
33 pending, the instrument shall be filed with the clerk in the  
34 county where the proceedings would be located by law. A copy  
35 of the instrument shall also be mailed to the personal

1 representative of the decedent, if any. A copy of a disclaimer  
2 affecting real estate shall be recorded in the office of the  
3 recorder of the county where the real estate is located.  
4 The instrument shall be irrevocable upon filing.

5 3. EFFECTIVE DISCLAIMER. Unless the decedent or donee  
6 of the power has otherwise provided, the property or part  
7 thereof or interest therein disclaimed, and any further  
8 interest which is to take effect in possession or enjoyment  
9 at or after the termination of the interest disclaimer, shall  
10 descend or be distributed as if the disclaimant has predeceased  
11 the decedent, or if the disclaimant is one designated to take  
12 pursuant to a power of appointment, exercised by testamentary  
13 instrument, then as if the disclaimant has predeceased the  
14 donee of the power. In every case, the disclaimer shall be  
15 related back for all purposes to the date of the death of  
16 the decedent or the donee, as the case may be. In the case  
17 of a devisee, the interest disclaimed shall descend pursuant  
18 to section six hundred thirty-three point two hundred seventy-  
19 three (633.273) of the Code. A person who has a present and  
20 a future interest in property and disclaims his present  
21 interest in whole or in part, shall be deemed to have  
22 disclaimed his future interest to the same extent. In the  
23 event of death of the disclaimant within the time allowed  
24 for the filing of a disclaimer, the right to disclaim shall  
25 terminate. In the event of disability of a person entitled  
26 to disclaim, the court may authorize or direct a conservator  
27 or guardian to exercise the right to disclaim on behalf of  
28 the person under disability when it is in his interest that  
29 it be done.

30 4. WAIVER AND BAR. Any assignment, conveyance,  
31 encumbrance, pledge or transfer of property or any interest  
32 therein or any contract therefor, or any written waiver of  
33 the right to disclaim or any acceptance of property or interest  
34 therein by an heir, next of kin, devisee, legatee, donee,  
35 person succeeding to a disclaimed interest, beneficiary or

1 person designated to take pursuant to a power of appointment  
2 exercised by testamentary instrument, and any sale of property  
3 by execution, made before the expiration of the period in  
4 which a person may disclaim as provided in this section, bars  
5 the right to disclaim the property. The right to disclaim  
6 granted by this section shall exist irrespective of any  
7 limitation on the interest of the disclaimant in the nature  
8 of a spendthrift provision or similar restriction. A  
9 disclaimer, when filed and recorded as provided in this section  
10 or a written waiver of the right to disclaim, shall be binding  
11 upon the disclaimant or person waiving and all parties claiming  
12 by, through or under him. The right to disclaim shall follow  
13 the proceeds of a disposition of property by a fiduciary,  
14 and shall not affect the disposition.

15 5. EXCLUSIVENESS OF REMEDY. This section shall not abridge  
16 the right of any person to assign, convey, release or renounce  
17 any property or interest therein arising under any other  
18 statute.

19 EXPLANATION

20 This bill provides that if five years have passed since  
21 the appointment of a personal representative or probate of  
22 a will without administration and the administrators have  
23 failed to publish the required notice by ~~section 633.230,~~  
24 but have published a notice of appointment or notice of  
25 admission such failure to publish notice is legalized. This  
26 bill also provides that notice to file objections to a probate  
27 proceeding must be served personally upon a person under legal  
28 disability. In addition this bill provides for a procedure  
29 to execute self-proved wills. This bill also provides that  
30 the court may distribute the proceeds from a wrongful death  
31 action among the surviving children and spouse on an equitable  
32 basis. This bill also allows a disclaimer of inheritance  
33 to be filed even if no administration proceedings are pending.

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## HOUSE FILE 1497

## AN ACT

MAKING AMENDMENTS TO THE PROBATE LAWS BY UPDATING PROVISIONS RELATING TO THE APPOINTMENT OF A PERSONAL REPRESENTATIVE, PROVIDING FOR A CHANGE IN THE METHOD OF SERVING NOTICE TO FILE OBJECTIONS IN A PROBATE PROCEEDING, PROVIDING FOR A CHANGE IN THE DISPOSITION OF PROCEEDS FROM A WRONGFUL DEATH ACTION WHICH ARE PROPERTY OF THE ESTATE, PROVIDING FOR SELF-PROVED WILLS, AND PROVIDING FOR A DISCLAIMER OF INHERITANCE WHEN AN ADMINISTRATION IS NOT PENDING.

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

Section 1. Section five hundred ninety point one (590.1), unnumbered paragraph two (2), Code 1975, is amended to read as follows:

~~In all instances prior to January 17, 1967~~ In all instances where more than five years have passed since the appointment of a personal representative or probate of a will without administration, where administrators have failed to publish notice of their appointment as required by section 633.230, and executors have failed to publish a notice of admission of the will to probate and their appointment as required by section 633.304 and six hundred thirty-three point three hundred five (633.305) of the Code, but have published a notice of appointment or notice of admission of the will to probate and of the appointment of the executor, such notice of appointment or notice of admission of the will to probate and of the appointment of the executor, is hereby legalized and shall have the same force and effect as though the same had been published as required.

Sec. 2. Section six hundred thirty-three point forty (633.40), subsection four (4), Code 1975, is amended to read as follows:

4. NOTICE OTHERWISE PROVIDED. In lieu of the foregoing the notice may direct each interested party to file his objections thereto in writing, if any, on or before a date

certain, to be set out in the notice and to be not less than twenty days after the day the notice is served upon him and that unless he does so file his objections in writing that he will be forever barred from making any objections thereto. Said notice may shall be served upon each interested party ~~either-by-ordinary-United-States-mail-or~~ personally in compliance with the rules of civil procedure, or upon those parties not under legal disability by ordinary United States mail. In the event objections thereto are timely filed, the court shall fix the time and place of the hearing for the judicial determination of the issues raised.

Sec. 3. Chapter six hundred thirty-three (633), division six (VI), part two (2), Code 1975, is amended by adding the following new section:

NEW SECTION. SELF-PROVED WILL. An attested will may, at the time of its execution, or at any subsequent date, be made self-proved, by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before a person authorized to administer oaths and take acknowledgements 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:

State of \_\_\_\_\_ SS  
County of \_\_\_\_\_

Before me, the undersigned, on this day personally appeared \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, \_\_\_\_\_, the testator, declared to me and to the witnesses, in my presence, 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 for the testator, in the presence of said witnesses, as the testator's free and voluntary act for the purposes therein expressed; that said witnesses, and each of them, declared 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 day 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. 4. Section six hundred thirty-three point three hundred thirty-six (633.336), Code 1975, is amended to read as follows:

633.336 DAMAGES FOR WRONGFUL DEATH. When a wrongful act produces death, damages recovered therefor shall be disposed of as personal property belonging to the estate of the deceased, ~~but if the deceased leaves a spouse, child, or parent, it shall not be liable for the payment of debts of the estate, except debts and charges of the first, second,~~

~~third-and-fifth-classes~~ however, if the damages include damages for loss of services and support of a deceased spouse and parent, such damages shall be apportioned by the court among the surviving spouse and children of the decedent in such manner as the court may deem equitable consistent with the loss of services and support sustained by the surviving spouse and children respectively. If the decedent leaves a spouse, child or parent, damages for wrongful death shall not be subject to debts and charges of the decedent's estate.

Sec. 5. Section six hundred thirty-three point seven hundred four (633.704), Code 1975, is amended by striking the section and inserting in lieu thereof the following:

633.704 RIGHT TO DISCLAIM SUCCESSION.

1. RIGHT OF DISTRIBUTEE. No person, including a person designated to take pursuant to a power of appointment, shall be required to take as a distributee, or otherwise, under the laws of Iowa, and any person may disclaim in whole or in part, the succession to any property, real or personal, or interest therein by filing a written instrument within the time and at the place hereinafter provided. The instrument shall:

- a. Describe the property or part thereof or interest therein disclaimed.
- b. Declare the disclaimer and the extent thereof and
- c. Be signed and acknowledged by the disclaimant.

2. TIME AND PLACE OF FILING.

a. TIME OF FILING. The disclaimer instrument shall be filed within six months after the date of the second publication of the notice to creditors, or within six 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 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 interest has become indefeasibly fixed both in quality and in quantity.

- b. PLACE OF FILING. The instrument shall be filed with

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the clerk in the county where the administration proceedings are pending. If no such administration proceedings are pending, the instrument shall be filed with the clerk in the county where the proceedings would be located by law. A copy of the instrument shall also be mailed to the personal representative of the decedent, if any. A copy of a disclaimer affecting real estate shall be recorded in the office of the recorder of the county where the real estate is located. The instrument shall be irrevocable upon filing.

3. EFFECTIVE DISCLAIMER. Unless the decedent or donee of the power has otherwise provided, the property or part thereof or interest therein disclaimed, and any further interest which is to take effect in possession or enjoyment at or after the termination of the interest disclaimer, shall descend or be distributed as if the disclaimant has predeceased the decedent, or if the disclaimant is one designated to take pursuant to a power of appointment, exercised by testamentary instrument, then as if the disclaimant has predeceased the donee of the power. In every case, the disclaimer shall be related back for all purposes to the date of the death of the decedent or the donee, as the case may be. In the case of a devisee, the interest disclaimed shall descend pursuant to section six hundred thirty-three point two hundred seventy-three (633.273) of the Code. A person who has a present and a future interest in property and disclaims his present interest in whole or in part, shall be deemed to have disclaimed his future interest to the same extent. In the event of death of the disclaimant within the time allowed for the filing of a disclaimer, the right to disclaim shall terminate. In the event of disability of a person entitled to disclaim, the court may authorize or direct a conservator or guardian to exercise the right to disclaim on behalf of the person under disability when it is in his interest that it be done.

4. WAIVER AND BAR. Any assignment, conveyance, encumbrance, pledge or transfer of property or any interest therein or any contract therefor, or any written waiver of

the right to disclaim or any acceptance or property or interest therein by an heir, next of kin, devisee, legatee, donee, person succeeding to a disclaimed interest, beneficiary or person designated to take pursuant to a power of appointment exercised by testamentary instrument, and any sale of property by execution, made before the expiration of the period in which a person may disclaim as provided in this section, bars the right to disclaim the property. The right to disclaim granted by this section shall exist irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. A disclaimer, when filed and recorded as provided in this section or a written waiver of the right to disclaim, shall be binding upon the disclaimant or person waiving and all parties claiming by, through or under him. The right to disclaim shall follow the proceeds of a disposition of property by a fiduciary, and shall not affect the disposition.

5. EXCLUSIVENESS OF REMEDY. This section shall not abridge the right of any person to assign, convey, release or renounce any property or interest therein arising under any other statute.

\_\_\_\_\_  
DALE M. COCHRAN  
Speaker of the House

\_\_\_\_\_  
ARTHUR A. NEU  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 1497, Sixty-sixth General Assembly.

\_\_\_\_\_  
DAVID L. WRAY  
Chief Clerk of the House

Approved June 23, 1976

\_\_\_\_\_  
ROBERT D. RAY  
Governor