

Judiciary
DeKoster, Chairperson
Hill of Polk
Willits

Revised per 5380 2/20 (p. 605)

Reprinted 2/78

FILED FEB 8 1978

SENATE FILE 2104

By KELLY

REPRINTED

Passed Senate, Date 2-23-78 (p. 627) Passed House, Date 5-11-78 *(P. 2556)*
Vote: Ayes 47 Nays 0 Vote: Ayes 91 Nays 0
Approved 7-5-78

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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SENATE FILE 2104

S-5380

Amend Senate File 2104 as follows:

1. Page 1, line 18, by inserting after the figure "(450.12)," the words "subsection one (1),".
2. Page 1, line 23, by striking the word "six".
3. Page 1, by striking line 24 and inserting in lieu thereof the words "six hundred".

S-5380 FILED
MARCH 20, 1978

*adopted 2/22
(p. 626)*

BY COMMITTEE ON JUDICIARY
GENE W. GLENN, Chairman

1 Section 1. Section four hundred fifty point seven (450.7),
2 subsection three (3), Code 1977, is amended to read as follows:

3 3. The sale, exchange, mortgage, or pledge of property
4 by the personal representative pursuant to a testamentary
5 direction or power, pursuant to section six hundred thirty-
6 three point three hundred eighty-seven (633.387) of the Code,
7 or under order of court, divests the property from the lien
8 of the tax. The proceeds from such a sale, exchange, mortgage,
9 or pledge shall be held by the personal representative subject
10 to the same priorities for the payment of the tax as existed
11 with respect to the property before the transaction, and the
12 personal representative is personally liable for payment of
13 the tax to the extent of the proceeds. Whenever there is
14 a change in the status, type, or nature of the assets reported
15 in the preliminary inventory, the change shall be reported
16 on or before the filing of the final report when required
17 by the department of revenue.

18 Sec. 2. Section four hundred fifty point twelve (450.12),
19 unnumbered paragraph two (2), Code 1977, is amended by striking
20 the paragraph and inserting in lieu thereof the following:

21 Said debts shall not be deducted unless the personal
22 representative certifies that the same have been paid or
23 allowed in accordance with the provisions of sections six
24 hundred thirty-three point twenty-eight (633.28), six hundred
25 thirty-three point four hundred twenty-eight (633.428), six
26 hundred thirty-three point four hundred thirty-one (633.431),
27 six hundred thirty-three point four hundred thirty-two
28 (633.432), six hundred thirty-three point four hundred thirty-
29 three (633.433), six hundred thirty-three point four hundred
30 thirty-four (633.434), six hundred thirty-three point four
31 hundred thirty-five (633.435), and six hundred thirty-three
32 point four hundred forty-eight (633.448), within twelve months
33 from the date of death of the decedent, unless otherwise
34 ordered by the court.

35 Sec. 3. Section six hundred thirty-three point three

1 (633.3), subsection eight (8), is amended to read as follows:

2 8. COSTS OF ADMINISTRATION--includes court costs,
3 fiduciary's fees, attorney fees, all appraisers' fees, premiums
4 on corporate surety bonds, statutory allowance for support
5 of surviving spouse and children, cost of continuation of
6 abstracts of title, recording fees, transfer fees, transfer
7 taxes, agents' fees allowed by order of court, interest
8 expense, including, but not limited to, interest payable on
9 extension of federal estate tax, and all other fees and
10 expenses allowed by order of court in connection with the
11 administration of the estate. Court costs shall include
12 expenses of selling property.

13 Sec. 4. Section six hundred thirty-three point six hundred
14 ninety-nine (633.699), subsection six (6), paragraph b is
15 amended to read as follows:

16 b. Directly for the maintenance, ~~welfare~~, and education
17 of the beneficiary;

18 Sec. 5. Section six hundred thirty-three point seven
19 hundred four (633.704), subsections three (3) and four (4),
20 Code 1977, are amended to read as follows:

21 3. EFFECTIVE DISCLAIMER. Unless the decedent or donee
22 of the power has otherwise provided, the property or part
23 thereof or interest therein disclaimed, and any ~~further~~ future
24 interest which is to take effect in possession or enjoyment
25 at or after the termination of the interest disclaimer, shall
26 descend or be distributed as if the disclaimant has predeceased
27 the decedent, or if the disclaimant is one designated to take
28 pursuant to a power of appointment, exercised by testamentary
29 instrument, then as if the disclaimant has predeceased the
30 donee of the power. In every case, the disclaimer shall be
31 related back for all purposes to the date of the death of
32 the decedent or the donee, as the case may be. In the case
33 of a devisee, the interest disclaimed shall descend pursuant
34 to section 633.273. A person who has a present and a future
35 interest in property and disclaims his or her present interest

1 in whole or in part, shall be deemed to have disclaimed his
2 or her future interest to the same extent. In the event of
3 death of the disclaimant within the time allowed for the
4 filing of a disclaimer, the right to disclaim shall terminate.
5 In the event of disability of a person entitled to disclaim,
6 the court may authorize or direct a conservator or guardian
7 to exercise the right to disclaim on behalf of the person
8 under disability when it is in his or her interest that it
9 be done.

10 4. WAIVER AND BAR. Any assignment, conveyance,
11 encumbrance, pledge or transfer of property or any interest
12 therein or any contract therefor, or any written waiver of
13 the right to disclaim or any acceptance ~~or~~ of property or
14 interest therein by an heir, next of kin, devisee, legatee,
15 donee, person succeeding to a disclaimed interest, beneficiary
16 or person designated to take pursuant to a power of appointment
17 exercised by testamentary instrument, and any sale of property
18 by execution, made before the expiration of the period in
19 which a person may disclaim as provided in this section, bars
20 the right to disclaim the property. An election by a surviving
21 spouse under sections six hundred thirty-three point two
22 hundred thirty-six (633.236) through six hundred thirty-three
23 point two hundred forty-six (633.246) inclusive shall not
24 be a waiver or bar of the right to disclaim. The right to
25 disclaim granted by this section shall exist irrespective
26 of any limitation on the interest of the disclaimant in the
27 nature of a spendthrift provision or similar restriction.
28 A disclaimer, when filed and recorded as provided in this
29 section or a written waiver of the right to disclaim, shall
30 be binding upon the disclaimant or person waiving and all
31 parties claiming by, through or under him or her. The right
32 to disclaim shall follow the proceeds of a disposition of
33 property by a fiduciary, and shall not affect the disposition.

34 Sec. 6. This Act is effective January 1, 1979.

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EXPLANATION

1 Section one of the bill is intended to include sales of
2 property by the personal representative of personal property
3 of a perishable nature or for which there is a regularly
4 established market. This will eliminate the necessity of
5 obtaining a consent by the Inheritance Tax Department for
6 transfer of stocks and securities for which there are regularly
7 established marketing cases where there is a regular
8 administration of estate. Perishable personal property is
9 sold without such consent and bank deposits, bank certificates
10 and government bonds are all transferred at the present time
11 without consent of the Inheritance Tax Department. Under
12 section one of the bill the personal representative becomes
13 personally liable for the tax.

14 Section two of the bill corresponds to changes in the
15 method of allowing and paying claims against decedent's
16 estates. Prior to the adoption of the Iowa Probate Code,
17 claims could be paid only when allowed by the court. Under
18 the present Code, the personal representative may allow and
19 pay claims at any time and such allowance of payment is not
20 subject to review by the court in the absence of fraud or
21 collusion. The twelve month period of section two of the
22 bill corresponds to the time period the inheritance tax report
23 is now due.

24 Section three of the bill provides that interest payable
25 on the extension of federal estate tax is a cost of
26 administration.

27 Section four of the bill corrects certain typographical
28 errors in the Code. The section also provides that an election
29 to take under the will should not limit the power to disclaim
30 by the surviving spouse if the disclaimer is properly and
31 timely filed.

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SENATE FILE 2104

By KELLY

(AS AMENDED AND PASSED BY THE SENATE MARCH 22, 1978)

Passed Senate, Date 3-22-78 627 Passed House, Date 5-11-78 2376

Vote: Ayes 467 Nays 0 Vote: Ayes 91 Nays 0

Approved 7-5-78

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

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_____ = New Language
by the Senate

* = Language Stricken
by the Senate

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2 subsection three (3), Code 1977, is amended to read as follows:

3 3. The sale, exchange, mortgage, or pledge of property
4 by the personal representative pursuant to a testamentary
5 direction or power, pursuant to section six hundred thirty-
6 three point three hundred eighty-seven (633.387) of the Code,
7 or under order of court, divests the property from the lien
8 of the tax. The proceeds from such a sale, exchange, mortgage,
9 or pledge shall be held by the personal representative subject
10 to the same priorities for the payment of the tax as existed
11 with respect to the property before the transaction, and the
12 personal representative is personally liable for payment of
13 the tax to the extent of the proceeds. Whenever there is
14 a change in the status, type, or nature of the assets reported
15 in the preliminary inventory, the change shall be reported
16 on or before the filing of the final report when required
17 by the department of revenue.

18 Sec. 2. Section four hundred fifty point twelve (450.12),
19 subsection one (1), unnumbered paragraph two (2), Code 1977,
20 is amended by striking the paragraph and inserting in lieu
21 thereof the following:

22 Said debts shall not be deducted unless the personal
23 representative certifies that the same have been paid or
*24 allowed in accordance with the provisions of sections six
25 hundred thirty-three point four hundred twenty-eight (633.428),
26 six hundred thirty-three point four hundred thirty-one
27 (633.431), six hundred thirty-three point four hundred thirty-
28 two (633.432), six hundred thirty-three point four hundred
29 thirty-three (633.433), six hundred thirty-three point four
30 hundred thirty-four (633.434), six hundred thirty-three point
31 four hundred thirty-five (633.435), and six hundred thirty-
32 three point four hundred forty-eight (633.448), within twelve
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8 expense, including, but not limited to, interest payable on
9 extension of federal estate tax, and all other fees and
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11 administration of the estate. Court costs shall include
12 expenses of selling property.

13 Sec. 4. Section six hundred thirty-three point six hundred
14 ninety-nine (633.699), subsection six (6), paragraph b is
15 amended to read as follows:

16 b. Directly for the maintenance, ~~welfare~~, and education
17 of the beneficiary;

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19 hundred four (633.704), subsections three (3) and four (4),
20 Code 1977, are amended to read as follows:

21 3. EFFECTIVE DISCLAIMER. Unless the decedent or donee
22 of the power has otherwise provided, the property or part
23 thereof or interest therein disclaimed, and any further future
24 interest which is to take effect in possession or enjoyment
25 at or after the termination of the interest disclaimer, shall
26 descend or be distributed as if the disclaimant has predeceased
27 the decedent, or if the disclaimant is one designated to take
28 pursuant to a power of appointment, exercised by testamentary
29 instrument, then as if the disclaimant has predeceased the
30 donee of the power. In every case, the disclaimer shall be
31 related back for all purposes to the date of the death of
32 the decedent or the donee, as the case may be. In the case
33 of a devisee, the interest disclaimed shall descend pursuant
34 to section 633.273. A person who has a present and a future
35 interest in property and disclaims his or her present interest

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9 be done.

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12 therein or any contract therefor, or any written waiver of
13 the right to disclaim or any acceptance ~~or~~ of property or
14 interest therein by an heir, next of kin, devisee, legatee,
15 donee, person succeeding to a disclaimed interest, beneficiary
16 or person designated to take pursuant to a power of appointment
17 exercised by testamentary instrument, and any sale of property
18 by execution, made before the expiration of the period in
19 which a person may disclaim as provided in this section, bars
20 the right to disclaim the property. An election by a surviving
21 spouse under sections six hundred thirty-three point two
22 hundred thirty-six (633.236) through six hundred thirty-three
23 point two hundred forty-six (633.246) inclusive shall not
24 be a waiver or bar of the right to disclaim. The right to
25 disclaim granted by this section shall exist irrespective
26 of any limitation on the interest of the disclaimant in the
27 nature of a spendthrift provision or similar restriction.
28 A disclaimer, when filed and recorded as provided in this
29 section or a written waiver of the right to disclaim, shall
30 be binding upon the disclaimant or person waiving and all
31 parties claiming by, through or under him or her. The right
32 to disclaim shall follow the proceeds of a disposition of
33 property by a fiduciary, and shall not affect the disposition.

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18 the present Code, the personal representative may allow and
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22 bill corresponds to the time period the inheritance tax report
23 is now due.

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28 errors in the Code. The section also provides that an election
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31 timely filed.

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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 633.273. A person who has a present and a future interest in property and disclaims his or her present interest in whole or in part, shall be deemed to have disclaimed his or her 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 or her 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 of 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. An election by a surviving spouse under sections six hundred thirty-three point two hundred thirty-six (633.236) through six hundred thirty-three point two hundred forty-six (633.246) inclusive shall not be a waiver or bar of the right to disclaim. 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 or her. The right to disclaim shall follow the proceeds of a disposition of property by a fiduciary, and shall not affect the disposition.

Sec. 6. This Act is effective January 1, 1979.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2104, Sixty-seventh General Assembly.

KEVIN P. LIGHT
Acting Secretary of the Senate

Approved 7/5, 1978

ROBERT D. RAY
Governor

SENATE FILE 2104

AN ACT

RELATING TO THE IOWA PROBATE CODE.

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

Section 1. Section four hundred fifty point seven (450.7), subsection three (3), Code 1977, is amended to read as follows:

3. The sale, exchange, mortgage, or pledge of property by the personal representative pursuant to a testamentary direction or power, pursuant to section six hundred thirty-three point three hundred eighty-seven (633.387) of the Code, or under order of court, divests the property from the lien of the tax. The proceeds from such a sale, exchange, mortgage, or pledge shall be held by the personal representative subject to the same priorities for the payment of the tax as existed with respect to the property before the transaction, and the personal representative is personally liable for payment of the tax to the extent of the proceeds. Whenever there is a change in the status, type, or nature of the assets reported in the preliminary inventory, the change shall be reported on or before the filing of the final report when required by the department of revenue.

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thirty-three (633.433), six hundred thirty-three point four hundred thirty-four (633.434), six hundred thirty-three point four hundred thirty-five (633.435), and six hundred thirty-three point four hundred forty-eight (633.448), within twelve months from the date of death of the decedent, unless otherwise ordered by the court.

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b. Directly for the maintenance, ~~welfare~~, and education of the beneficiary;

Sec. 5. Section six hundred thirty-three point seven hundred four (633.704), subsections three (3) and four (4), Code 1977, are amended to read as follows:

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~~ future 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