

Amended by the Senate July 1988

JAN 27 1988

Place On Calendar

HOUSE FILE 2123
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly House Study Bill 513)

Passed House, Date 2/15/88 (1988) Passed Senate, Date 3/24/88 (1988)

Vote: Ayes 47 Nays 0 Vote: Ayes 47 Nays 0

Approved April 12, 1988 (1988)

A BILL FOR

1 An Act relating to the inheritance laws by providing for the
2 power of a surviving spouse's conservator to elect to take or
3 refuse to take under a will or to elect to occupy the
4 homestead, eliminating the time requirement when the share of
5 a surviving spouse may be set off by referees when the spouse
6 elects to take against the will, and providing for a share of
7 an estate of a child born or adopted after execution of a
8 testator's last will.

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

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HF 2123

1 Section 1. Section 633.236, Code 1987, is amended to read
2 as follows:

3 633.236 RIGHT OF SURVIVING SPOUSE TO ELECT TO TAKE AGAINST
4 WILL.

5 When a married person dies testate as to any part of the
6 person's estate, the surviving spouse shall have the right to
7 elect to take against the will under the provisions of
8 sections 633.237 to 633.246. If the surviving spouse has a
9 conservator, the court may authorize or direct the conservator
10 to elect to take under or against the will as the court deems
11 appropriate under the circumstances.

12 Sec. 2. Section 633.237, unnumbered paragraph 1, Code
13 1987, is amended to read as follows:

14 If a voluntary election to take or refuse to take under a
15 will has not been filed by a surviving spouse or the spouse's
16 conservator, if any, within two months of the date of the
17 second publication of notice of admission of the will to
18 probate, and the surviving spouse is not the executor of the
19 will, the executor shall cause to be served a written notice
20 upon the surviving spouse and the spouse's conservator, if
21 any, in the manner directed by the court, advising the
22 surviving spouse and the spouse's conservator that the will of
23 the decedent has been admitted to probate, stating the name of
24 the court where the will was admitted and the date when the
25 will was admitted to probate, and notifying the spouse and the
26 spouse's conservator that unless within four months after
27 service of the notice, the spouse or the spouse's conservator
28 files an election in writing with the clerk of that court
29 refusing to take under the will, the spouse shall take under
30 the will. If the surviving spouse or the spouse's conservator
31 files an election to take under the will at any time the
32 requirements of this section for serving notice are waived.
33 If within the period of four months an affidavit is filed
34 setting forth that the surviving spouse is incapable to make
35 the election and does not have a conservator, the court shall

1 determine whether there shall be an election to take under or
2 against the will in accordance with section 633.238 as the
3 court deems appropriate under the circumstances. The court on
4 application may, prior to the expiration of the period of four
5 months, for cause shown, enter an order extending the time for
6 making the election.

7 Sec. 3. Section 633.240, Code 1987, is amended to read as
8 follows:

9 633.240 ELECTION TO OCCUPY HOMESTEAD.

10 In intestate estates, or where the surviving spouse elects
11 to take against the will, the surviving spouse or the spouse's
12 conservator, if any, may, in lieu of the spouse's share in the
13 real property possessed by the decedent at any time during
14 their marriage which has not been sold on execution or other
15 judicial sale, and to which the surviving spouse has made no
16 relinquishment of right, elect to occupy the homestead. Such
17 election shall be made and entered of record as provided in
18 section 633.245. In making such election, the surviving
19 spouse shall have all the rights as to personal property
20 provided in subsections 2 and 3 of section 633.238. In case
21 of failure to make such election, the right to occupy the
22 homestead shall be waived.

23 Sec. 4. Section 633.244, Code 1987, is amended to read as
24 follows:

25 633.244 INCOMPETENT SPOUSE -- ELECTION BY COURT.

26 In case an affidavit is filed that the surviving spouse is
27 incapable of making an election to take against the will, or
28 to elect to occupy the homestead, and does not have a
29 conservator, the court shall fix a time and place of hearing
30 on the matter, and cause a notice thereof to be served upon
31 said the surviving spouse in such manner and for such time as
32 the court may direct. At the hearing, a guardian ad litem
33 shall be appointed to represent such the spouse, and the court
34 shall enter such orders as it may ~~deem to be for the best~~
35 ~~interests of such person~~ deems appropriate under the

1 circumstances.

2 Sec. 5. Section 633.247, Code 1987, is amended to read as
3 follows:

4 633.247 SETTING OFF SHARE OF SURVIVING SPOUSE WHEN
5 ELECTING TO TAKE AGAINST THE WILL -- TIME LIMIT.

6 The share of the surviving spouse under section 633.236 may
7 be set off by the mutual consent of all parties in interest,
8 or by referees appointed by the court. An application to have
9 it set off by referees shall be made in writing within-four
10 months-after-the-second-publication-of-notice-of-the-probate
11 of-the-will,-or-within-one-month-after-the-election-to-take
12 against-the-will-is-filed-with-the-clerk,-whichever-is-the
13 longer. The application must describe the land in which the
14 share is claimed, and pray for the appointment of referees to
15 set it off.

16 Sec. 6. Section 633.267, Code 1987, is amended to read as
17 follows:

18 633.267 CHILDREN BORN OR ADOPTED AFTER EXECUTION OF WILL.

19 When a testator fails to provide in the testator's will for
20 any of the testator's children born to or adopted by the
21 testator after the making of the testator's last will, such
22 child, whether born before or after the testator's death,
23 shall receive a share in the estate of the testator equal in
24 value to that which the child would have received under
25 section 633.211, 633.212, or 633.219, whichever section or
26 sections are applicable, if the testator had died intestate,
27 unless it appears from the will that such omission was
28 intentional.

29 Sec. 7. Section 633.647, Code 1987, is amended by adding
30 the following new subsection:

31 NEW SUBSECTION. 7. To make an election for the ward who
32 is a surviving spouse as provided in sections 633.236 and
33 633.240.

34 EXPLANATION

35 This bill provides for several changes in Iowa's probate

1 code. An election to take or refuse to take under a will or
2 to occupy the homestead by a surviving spouse who has a
3 conservator may be made by the conservator. The requirement
4 that an application to have the share of a surviving spouse
5 set off must be made within four months after the second
6 publication of notice of probate or within one month after the
7 election to take against the will is filed with the clerk is
8 eliminated. A child born or adopted after the execution of
9 the testator's last will is to receive a share of the estate
10 equal to the share the child would have received had the
11 testator died without a will.

12 SUCCESSOR TO SENATE STUDY BILLS 513, 512, 515

13 (LSB 7594, 7590, 7588)

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HOUSE FILE 2123

H-5041

1 Amend House File 2123 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 450.4, subsection 1, Code
5 1987, is amended by striking the subsection and
6 inserting in lieu thereof the following:

7 1. When the entire estate of the decedent, after
8 deducting the liabilities as defined in this chapter,
9 does not exceed the following amount:

10 a. For persons dying before July 1, 1989, ten
11 thousand dollars.

12 b. For persons dying on or after July 1, 1989, but
13 before July 1, 1990, one hundred thousand dollars.

14 c. For persons dying on or after July 1, 1990, but
15 before July 1, 1991, two hundred thousand dollars.

16 d. For persons dying on or after July 1, 1991, but
17 before July 1, 1992, three hundred thousand dollars.

18 e. For persons dying on or after July 1, 1992, but
19 before July 1, 1993, four hundred thousand dollars.

20 f. For persons dying on or after July 1, 1993, but
21 before July 1, 1994, five hundred thousand dollars.

22 g. For persons dying on or after July 1, 1994, six
23 hundred thousand dollars."

24 2. Title page, line 1, by inserting after the
25 word "by" the following: "exempting certain estates
26 from inheritance tax,".

H-5041 FILED FEBRUARY 2, 1988

BY SCHNEKLOTH of Scott

Revised and approved 2/17/88

House Study Bill 513
Judiciary and Law Enforcement: McKinney, Chair; Chapman, Lageschulte, Peterson
of Carroll and Siegrist.

NSR 513

Judiciary & Law Enforcement

2/23

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY AND LAW
ENFORCEMENT BILL)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the power of a surviving spouse's conservator
2 to elect to take or refuse to take under a will or to elect to
3 occupy the homestead.

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

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2 as follows:

3 633.236 RIGHT OF SURVIVING SPOUSE TO ELECT TO TAKE AGAINST
4 WILL.

5 When a married person dies testate as to any part of the
6 person's estate, the surviving spouse shall have the right to
7 elect to take against the will under the provisions of
8 sections 633.237 to 633.246. If the surviving spouse has a
9 conservator, the court may authorize or direct the conservator
10 to elect to take under or against the will as the court deems
11 appropriate under the circumstances.

12 Sec. 2. Section 633.237, unnumbered paragraph 1, Code
13 1987, is amended to read as follows:

14 If a voluntary election to take or refuse to take under a
15 will has not been filed by a surviving spouse or the spouse's
16 conservator, if any, within two months of the date of the
17 second publication of notice of admission of the will to
18 probate, and the surviving spouse is not the executor of the
19 will, the executor shall cause to be served a written notice
20 upon the surviving spouse and the spouse's conservator, if
21 any, in the manner directed by the court, advising the
22 surviving spouse and the spouse's conservator that the will of
23 the decedent has been admitted to probate, stating the name of
24 the court where the will was admitted and the date when the
25 will was admitted to probate, and notifying the spouse and the
26 spouse's conservator that unless within four months after
27 service of the notice, the spouse or the spouse's conservator
28 files an election in writing with the clerk of that court
29 refusing to take under the will, the spouse shall take under
30 the will. If the surviving spouse or the spouse's conservator
31 files an election to take under the will at any time the
32 requirements of this section for serving notice are waived.
33 If within the period of four months an affidavit is filed
34 setting forth that the surviving spouse is incapable to make
35 the election and does not have a conservator, the court shall

1 determine whether there shall be an election to take under or
2 against the will in accordance with section 633.238 as the
3 court deems appropriate under the circumstances. The court on
4 application may, prior to the expiration of the period of four
5 months, for cause shown, enter an order extending the time for
6 making the election.

7 Sec. 3. Section 633.240, Code 1987, is amended to read as
8 follows:

9 633.240 ELECTION TO OCCUPY HOMESTEAD.

10 In intestate estates, or where the surviving spouse elects
11 to take against the will, the surviving spouse or the spouse's
12 conservator, if any, may, in lieu of the spouse's share in the
13 real property possessed by the decedent at any time during
14 their marriage which has not been sold on execution or other
15 judicial sale, and to which the surviving spouse has made no
16 relinquishment of right, elect to occupy the homestead. Such
17 election shall be made and entered of record as provided in
18 section 633.245. In making such election, the surviving
19 spouse shall have all the rights as to personal property
20 provided in subsections 2 and 3 of section 633.238. In case
21 of failure to make such election, the right to occupy the
22 homestead shall be waived.

23 Sec. 4. Section 633.244, Code 1987, is amended to read as
24 follows:

25 633.244 INCOMPETENT SPOUSE -- ELECTION BY COURT.

26 In case an affidavit is filed that the surviving spouse is
27 incapable of making an election to take against the will, or
28 to elect to occupy the homestead, and does not have a
29 conservator, the court shall fix a time and place of hearing
30 on the matter, and cause a notice thereof to be served upon
31 ~~said~~ the surviving spouse in such manner and for such time as
32 the court may direct. At the hearing, a guardian ad litem
33 shall be appointed to represent such the spouse, and the court
34 shall enter such orders as it ~~may-deem-to-be-for-the-best~~
35 interests-of-such-person deems appropriate under the

1 circumstances.

2 Sec. 5. Section 633.647, Code 1987, is amended by adding
3 the following new subsection:

4 NEW SUBSECTION. 7. To make an election for the ward who
5 is a surviving spouse as provided in sections 633.236 and
6 633.240.

7 EXPLANATION

8 This bill provides that an election to take or refuse to
9 take under a will or to occupy the homestead by a surviving
10 spouse who has a conservator may be made by the conservator.

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HOUSE FILE 2123

AN ACT

RELATING TO THE INHERITANCE LAWS BY PROVIDING FOR THE POWER OF A SURVIVING SPOUSE'S CONSERVATOR TO ELECT TO TAKE OR REFUSE TO TAKE UNDER A WILL OR TO ELECT TO OCCUPY THE HOMESTEAD, ELIMINATING THE TIME REQUIREMENT WHEN THE SHARE OF A SURVIVING SPOUSE MAY BE SET OFF BY REFEREES WHEN THE SPOUSE ELECTS TO TAKE AGAINST THE WILL, AND PROVIDING FOR A SHARE OF AN ESTATE OF A CHILD BORN OR ADOPTED AFTER EXECUTION OF A TESTATOR'S LAST WILL.

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

Section 1. Section 633.236, Code 1987, is amended to read as follows:

633.236 RIGHT OF SURVIVING SPOUSE TO ELECT TO TAKE AGAINST WILL.

When a married person dies testate as to any part of the person's estate, the surviving spouse shall have the right to elect to take against the will under the provisions of sections 633.237 to 633.246. If the surviving spouse has a conservator, the court may authorize or direct the conservator to elect to take under or against the will as the court deems appropriate under the circumstances.

Sec. 2. Section 633.237, unnumbered paragraph 1, Code 1987, is amended to read as follows:

If a voluntary election to take or refuse to take under a will has not been filed by a surviving spouse or the spouse's conservator, if any, 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 the will, the executor shall cause to be served a written notice upon the surviving spouse and the spouse's conservator, if any, in the manner directed by the court, advising the

surviving spouse and the spouse's conservator that the will of 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 the spouse and the spouse's conservator that unless within four months after service of the notice, the spouse or the spouse's conservator files an election in writing with the clerk of that court refusing to take under the will, the spouse shall take under the will. If the surviving spouse or the spouse's conservator files an election to take under the will at any time the requirements of this section for serving notice are waived. If within the period of four months an affidavit is filed setting forth that the surviving spouse is incapable to make the election and does not have a conservator, the court shall determine whether there shall be an election to take under or against the will in accordance with section 633.238 as the court deems appropriate under the circumstances. The court on application may, prior to the expiration of the period of four months, for cause shown, enter an order extending the time for making the election.

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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 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 633.267, Code 1987, is amended to read as follows:

633.267 CHILDREN BORN OR ADOPTED AFTER EXECUTION OF WILL.

When a testator fails to provide in the testator's will for any of the testator's children born to or adopted by the testator after the making of the testator's last will, such child, whether born before or after the testator's death,

shall receive a share in the estate of the testator equal in value to that which the child would have received under section 633.211, 633.212, or 633.219, whichever section of sections are applicable, if the testator had died intestate, unless it appears from the will that such omission was intentional.

Sec. 7. Section 633.647, Code 1987, is amended by adding the following new subsection:

NEW SUBSECTION. 7. To make an election for the ward who is a surviving spouse as provided in sections 633.236 and 633.240.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2123, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved April 12, 1988

TERRY E. BRANSTAD
Governor