

FILED MAR 14 1991

SENATE FILE **355**  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 79)

Passed Senate, Date 4/5/91 (p. 1084) Passed House, Date 4/15/91 (p. 1358)  
Vote: Ayes 45 Nays 0 Vote: Ayes 31 Nays 12

Approved May 6, 1991 (p. 1704)

*Proposed Senate file S-3440 4/22/91 (p. 1378)  
Ayes 49 Nays 0*

**A BILL FOR**

1 An Act relating to authorizing a spouse to execute a power of  
2 attorney instrument sufficient to relinquish homestead rights  
3 and surviving spouse's statutory share in the homestead.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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**SF 355**

1 Section 1. Section 561.13, Code 1991, is amended to read  
2 as follows:

3 561.13 CONVEYANCE OR ENCUMBRANCE.

H-35544

A conveyance or encumbrance of, or contract to convey or  
5 encumber the homestead, if the owner is married, is not valid,  
6 unless and until the spouse of the owner executes the same or  
7 a like instrument, or a power of attorney for the execution of  
8 the same or a like instrument, ~~and the instrument or power of~~  
9 ~~attorney sets out the legal description of the homestead.~~

10 However, when the homestead is conveyed or encumbered along  
11 with or in addition to other real estate, it is not necessary  
12 to particularly describe or set aside the tract of land  
13 constituting the homestead, whether the homestead is  
14 exclusively the subject of the contract or not, but the  
15 contract may be enforced as to real estate other than the  
16 homestead at the option of the purchaser or encumbrancer. If  
17 a spouse who holds only homestead rights and ~~inchoate dower~~  
18 rights surviving spouse's statutory share in the homestead  
19 specifically relinquishes homestead rights in an instrument,  
20 including a power of attorney constituting the other spouse as  
21 the husband's or wife's attorney in fact, as provided in  
22 section 597.5, it is not necessary for the spouse to join in  
23 the granting clause of the same or a like instrument.

24 Sec. 2. Section 597.5, Code 1991, is amended to read as  
25 follows:

26 597.5 ATTORNEY IN FACT.

27 A husband or wife may constitute the other spouse as the  
28 husband's or wife's attorney in fact, to control and dispose  
29 of the husband's or wife's property, including the  
30 relinquishment of homestead rights and surviving spouse's  
31 statutory share in the homestead, as provided in section  
32 561.13, for their mutual benefit, and may revoke the  
33 appointment, the same as other persons.

34 EXPLANATION

35 This bill provides that a husband or wife may relinquish

1 homestead rights or the surviving spouse's statutory share in  
2 the homestead by a general power of attorney constituting the  
3 person's spouse as attorney in fact.

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SENATE FILE 355

H-3554

1 Amend Senate File 355, as passed by the Senate, as  
2 follows:

3 1. Page 1, lines 8 and 9, by striking the words  
4 "~~7-and-the-instrument-or-power-of-attorney-sets-out-the~~  
5 ~~legal-description-of-the-homestead~~" and inserting  
6 the following: ", and the instrument or power of attorney  
7 sets out the legal description of the homestead".

By DODERER of Johnson

H-3554 FILED APRIL 9, 1991

*Adopted 4/15/91 (p. 256)*

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HOUSE AMENDMENT TO  
SENATE FILE 355

S-3440

1 Amend Senate File 355, as passed by the Senate, as  
2 follows:

3 1. Page 1, lines 8 and 9, by striking the words  
4 "~~7-and-the-instrument-or-power-of-attorney-sets-out-the~~  
5 ~~legal-description-of-the-homestead~~" and inserting  
6 the following: ", and the instrument or power of attorney  
7 sets out the legal description of the homestead".

RECEIVED FROM THE HOUSE

S-3440 FILED APRIL 16, 1991

*Senate concurred 4/22/91 (p. 1398)*

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VARN, CH.  
HESTER  
LACERLA

SSB 79  
JUDICIARY

SENATE FILE 355  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON STURGEON)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to authorizing a spouse to execute a power of  
2 attorney instrument sufficient to relinquish homestead rights  
3 and inchoate surviving spouse's statutory share in the  
4 homestead.

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

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1 Section 1. Section 561.13, Code 1991, is amended to read  
2 as follows:

3 561.13 CONVEYANCE OR ENCUMBRANCE.

4 A conveyance or encumbrance of, or contract to convey or  
5 encumber the homestead, if the owner is married, is not valid,  
6 unless and until the spouse of the owner executes the same or  
7 a like instrument, or a power of attorney for the execution of  
8 the same or a like instrument, ~~and the instrument or power of~~  
9 ~~attorney sets out the legal description of the homestead.~~  
10 However, when the homestead is conveyed or encumbered along  
11 with or in addition to other real estate, it is not necessary  
12 to particularly describe or set aside the tract of land  
13 constituting the homestead, whether the homestead is  
14 exclusively the subject of the contract or not, but the  
15 contract may be enforced as to real estate other than the  
16 homestead at the option of the purchaser or encumbrancer. If  
17 a spouse who holds only homestead rights and ~~inchoate dower~~  
18 rights surviving spouse's statutory share in the homestead  
19 specifically relinquishes homestead rights in an instrument,  
20 including a power of attorney constituting the other spouse as  
21 the husband's or wife's attorney in fact, as provided in  
22 section 597.5, it is not necessary for the spouse to join in  
23 the granting clause of the same or a like instrument.

24 Sec. 2. Section 597.5, Code 1991, is amended to read as  
25 follows:

26 597.5 ATTORNEY IN FACT.

27 A husband or wife may constitute the other spouse as the  
28 husband's or wife's attorney in fact, to control and dispose  
29 of the husband's or wife's property, including the  
30 relinquishment of homestead rights and surviving spouse's  
31 statutory share in the homestead, as provided in section  
32 561.13, for their mutual benefit, and may revoke the  
33 appointment, the same as other persons.

34 EXPLANATION

35 This bill provides that a husband or wife may relinquish

1 homestead rights or the surviving spouse's statutory share in  
2 the homestead by a general power of attorney constituting the  
3 person's spouse as attorney in fact.

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SENATE FILE 355

AN ACT

RELATING TO AUTHORIZING A SPOUSE TO EXECUTE A POWER OF ATTORNEY INSTRUMENT SUFFICIENT TO RELINQUISH HOMESTEAD RIGHTS AND SURVIVING SPOUSE'S STATUTORY SHARE IN THE HOMESTEAD.

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

Section 1. Section 561.13, Code 1991, is amended to read as follows:

561.13 CONVEYANCE OR ENCUMBRANCE.

A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument, or a power of attorney for the execution of the same or a like instrument, and the instrument or power of attorney sets out the legal description of the homestead. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the subject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer. If a spouse who holds only homestead rights and inchoate-dower rights surviving spouse's statutory share in the homestead specifically relinquishes homestead rights in an instrument, including a power of attorney constituting the other spouse as the husband's or wife's attorney in fact, as provided in section 597.5, it is not necessary for the spouse to join in the granting clause of the same or a like instrument.

Sec. 2. Section 597.5, Code 1991, is amended to read as follows:

597.5 ATTORNEY IN FACT.

A husband or wife may constitute the other spouse as the husband's or wife's attorney in fact, to control and dispose of the husband's or wife's property, including the relinquishment of homestead rights and surviving spouse's statutory share in the homestead, as provided in section 561.13, for their mutual benefit, and may revoke the appointment, the same as other persons.

\_\_\_\_\_  
JOE J. WELSH  
President of the Senate

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ROBERT C. ARNOULD  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 355, Seventy-fourth General Assembly.

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JOHN F. DWYER  
Secretary of the Senate

Approved *May 6*, 1991

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TERRY E. BRANSTAD  
Governor