

Supreme

FILED MAR 1 1993

SENATE FILE 371
BY COMMITTEE ON JUDICIARY
Substituted for HF 596
(SUCCESSOR TO SSB 154)

Passed Senate, Date ^(P.766) 3/22/93 Passed House, Date ^(P.1127) 4/28/93
Vote: Ayes 49 Nays 0 Vote: Ayes 100 Nays 0
Approved 5/11/93

A BILL FOR

1 An Act relating to probate, including certain notice provisions
2 and statutory shares.

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

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1 Section 1. Section 633.42, Code 1993, is amended to read
2 as follows:

3 633.42 REQUESTS FOR NOTICE.

4 At any time after the issuance of letters testamentary or
5 of administration upon a decedent's estate, any person
6 interested in the estate may file with the clerk a written
7 request, in ~~duplicate~~ triplicate, for notice of the time and
8 place of all hearings in such estate for which notice is
9 required by law, by rule of court, or by an order in such
10 estate. ~~Such~~ The request for notice shall state the name and
11 post-office address of such person and the name and post-
12 office address of the attorney, if any, for the party
13 requesting the notice. The clerk shall docket ~~such the~~
14 request, and transmit the ~~duplicate~~ duplicates to the personal
15 representative of the estate of the decedent and to the
16 personal representative's attorney of record, if any.

17 Thereafter, the personal representative shall, unless
18 otherwise ordered by the court, serve, by ordinary mail, upon
19 such person, or the person's ~~said~~ attorney, if any, a notice
20 of each such hearing.

21 Sec. 2. Section 633.219, Code 1993, is amended to read as
22 follows:

23 633.219 SHARE OF OTHERS THAN SURVIVING SPOUSE.

24 The ~~portion part~~ of the intestate estate ~~remaining-after~~
25 ~~the-payment-of-the-debts-and-charges,-and~~ not distributed
26 ~~passing~~ to the surviving spouse, ~~as-provided-in-this-Code,~~ or
27 if there is no surviving spouse, then the remaining entire net
28 ~~estate after-payment-of-the-debts-and-charges,-shall-descend~~
29 ~~and-be-distributed~~ passes as follows:

30 1. ~~In-equal-shares-to-the-decedent's-children,-unless-one~~
31 ~~or-more-of-them-is-dead,-in-which-case~~ To the issue of such
32 ~~deceased-child-shall-inherit-the-child's-share-in-accordance~~
33 ~~with-the-rules-herein-prescribed,-in-the-same-manner-as-though~~
34 ~~said-child-had-outlived-the-child's-parents~~ the decedent per
35 stirpes.

1 2. If there is no ~~person to take under subsection 1 of~~
2 ~~this section, then to the~~ surviving issue, to the parents in
3 equal shares of the decedent equally; and if either parent is
4 dead, the portion that would have gone to such deceased
5 parent, shall go to the survivor.

6 3. If there is no person to take under either subsection 1
7 or 2 of this section, ~~the portion uninherited shall go to such~~
8 ~~persons as would have been entitled to take if the parents of~~
9 ~~the decedent had outlived the intestate and had died in~~
10 ~~possession and ownership of the portion thus falling to their~~
11 ~~share, and so on, through their ascending ancestors and their~~
12 heirs to the issue of the parents or either of them per
13 stirpes.

14 4. If ~~heirs are not thus found~~ there is no person to take
15 under subsection 1, 2 or 3 of this section, ~~the portion~~
16 ~~uninherited shall go to the spouse of the intestate, and if~~
17 ~~the spouse is dead, then to the heirs of the spouse, according~~
18 ~~to like rules. If such intestate has had more than one spouse~~
19 ~~who either died or survived in lawful wedlock, it shall be~~
20 ~~equally divided between the one who is living and the heirs of~~
21 ~~those who are dead, or between the heirs of all such heirs,~~
22 taking per stirpes and not per capita but the decedent is
23 survived by one or more grandparents or issue of grandparents,
24 half the estate passes to the paternal grandparents, if both
25 survive, or to the surviving paternal grandparent, or to the
26 issue of the paternal grandparents if both are deceased, the
27 issue taking per stirpes, and the other half passes to the
28 maternal relatives in the same manner; but if there is no
29 surviving grandparent or issue of grandparent on one side, the
30 entire estate passes to the relatives of the other side in the
31 same manner as the half.

32 5. If there is no person to take under subsection 1, 2, 3,
33 or 4 of this section, the portion uninherited shall go to the
34 issue of the deceased spouse of the intestate, per stirpes.
35 If the intestate has had more than one spouse who died in

1 lawful wedlock, it shall be equally divided between the issue,
2 per stirpes, of those deceased spouses.

3 5 6. If there is no person who qualifies under either
4 subsection 1, 2, 3, ~~or~~ 4, or 5 of this section, the intestate
5 property shall escheat to the state of Iowa.

6 Sec. 3. Section 633.304, Code 1993, is amended by adding
7 the following new unnumbered paragraph after unnumbered
8 paragraph 1:

9 NEW UNNUMBERED PARAGRAPH. As used in this section, "heir"
10 means only such person as would, in an intestate estate, be
11 entitled to a share under subsection 1, 2, or 3 of section
12 633.219.

13 Sec. 4. Section 633.305, Code 1993, is amended by adding
14 the following new unnumbered paragraph after unnumbered
15 paragraph 1.

16 NEW UNNUMBERED PARAGRAPH. As used in this section, "heir"
17 means only such person as would, in an intestate estate, be
18 entitled to a share under subsection 1, 2, or 3 of section
19 633.219.

20 EXPLANATION

21 This bill provides as follows:

22 Section 1 requires requests for notice in probate to be
23 filed in triplicate, instead of duplicate, with one copy of
24 the request going to the personal representative and the
25 personal representative's attorney.

26 Section 2 makes changes in the manner in which the estate
27 of a person who dies without a valid will is distributed to
28 provide that heirs of the decedent be determined through the
29 decedent's grandparents and their issue. Section 2 also
30 provides that if a portion of the estate remains uninheritd,
31 it would pass to the issue of the deceased spouse of the
32 intestate.

33 Sections 3 and 4 change the definition of heir in sections
34 pertaining to notice, to conform to the changes made in
35 section 633.219.

GIANNETTO, CH.
STURGEON
MCKEAN

SSB 154
JUDICIARY

SENATE FILE 371
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIR-
PERSON STURGEON)

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

A BILL FOR

1 An Act relating to probate, including certain notice provisions
2 and statutory shares.

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

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1 Section 1. Section 633.42, Code 1993, is amended to read
2 as follows:

3 633.42 REQUESTS FOR NOTICE.

4 At any time after the issuance of letters testamentary or
5 of administration upon a decedent's estate, any person
6 interested in the estate may file with the clerk a written
7 request, in ~~duplicate~~ triplicate, for notice of the time and
8 place of all hearings in such estate for which notice is
9 required by law, by rule of court, or by an order in such
10 estate. ~~Such~~ The request for notice shall state the name and
11 post-office address of such person and the name and post-
12 office address of the attorney, if any, for the party
13 requesting the notice. The clerk shall docket ~~such~~ the
14 request, and transmit the ~~duplicate~~ duplicates to the personal
15 representative of the estate of the decedent and to the
16 personal representative's attorney of record, if any.

17 Thereafter, the personal representative shall, unless
18 otherwise ordered by the court, serve, by ordinary mail, upon
19 such person, or the person's ~~said~~ attorney, if any, a notice
20 of each ~~such~~ hearing.

21 Sec. 2. Section 633.211, Code 1993, is amended to read as
22 follows:

23 633.211 SHARE OF SURVIVING SPOUSE IF DECEDENT LEFT NO
24 ISSUE OR LEFT ISSUE ALL OF WHOM ARE ISSUE OF SURVIVING SPOUSE.

25 If the decedent dies intestate leaving a surviving spouse
26 and leaving no issue or leaving issue all of whom are the
27 issue of the surviving spouse, the surviving spouse shall
28 receive the following share:

29 1. ~~All-the~~ One-third in value of all the legal or
30 equitable estates in real property possessed by the decedent
31 at any time during the marriage, which have not been sold on
32 execution or by other judicial sale, and to which the
33 surviving spouse has made no relinquishment of right.

34 2. All personal property that, at the time of death, was,
35 in the hands of the decedent ~~as-the-head-of-a-family~~, exempt

1 from execution.

2 3. ~~All other personal property of the~~
3 decedent's remaining estate which is not necessary for the
4 payment of debts and charges.

5 Sec. 3. Section 633.212, Code 1993, is amended to read as
6 follows:

7 633.212 SHARE OF SURVIVING SPOUSE IF DECEDENT LEFT ISSUE
8 SOME OF WHOM ARE NOT ISSUE OF SURVIVING SPOUSE.

9 If the decedent dies intestate leaving a surviving spouse
10 and leaving issue some of whom are not the issue of the
11 surviving spouse, the surviving spouse shall receive the
12 following share:

13 1. ~~One-half~~ One-third in value of all the legal or
14 equitable estates in real property possessed by the decedent
15 at any time during the marriage, which have not been sold on
16 execution or by other judicial sale, and to which the
17 surviving spouse has made no relinquishment of right.

18 2. All personal property that, at the time of death, was
19 in the hands of the decedent ~~as the head of a family~~, exempt
20 from execution.

21 3. One-half in value of all other personal property ~~of and~~
22 one-sixth in value of the remaining legal or equitable estates
23 in real property possessed by the decedent which is not
24 necessary for the payment of debts and charges shares.

25 4. If the property received by the surviving spouse under
26 subsections 1, 2 and 3 of this section is not equal in value
27 to the sum of fifty thousand dollars, then so much additional
28 of any remaining homestead interest and of the remaining real
29 and personal property of the decedent that is subject to
30 payment of debts and charges against the decedent's estate,
31 after payment of the debts and charges, even to the extent of
32 the whole of the net estate, as necessary to make the amount
33 of fifty thousand dollars.

34 Sec. 4. Section 633.219, Code 1993, is amended to read as
35 follows:

1 633.219 SHARE OF OTHERS THAN SURVIVING SPOUSE.

2 The portion part of the intestate estate remaining-after
3 ~~the-payment-of-the-debts-and-charges,~~ and not distributed
4 passing to the surviving spouse, as-provided-in-this-Code, or
5 if there is no surviving spouse, then the remaining entire net
6 estate ~~after-payment-of-the-debts-and-charges,~~ shall-descend
7 and-be-distributed passes as follows:

8 1. ~~In-equal-shares-to-the-decedent's-children, unless one~~
9 ~~or-more-of-them-is-dead, in-which-case~~ To the issue of such
10 ~~deceased-child shall inherit the child's share in accordance~~
11 ~~with-the-rules-herein-prescribed, in-the-same-manner-as-though~~
12 ~~said-child-had-outlived-the-child's-parents~~ the decedent per
13 stirpes.

14 2. If there is no person-to-take-under-subsection-1-of
15 this-section, then-to-the surviving issue, to the parents in
16 equal-shares of the decedent equally; and if either parent is
17 dead, the portion that would have gone to such deceased
18 parent, shall go to the survivor.

19 3. If there is no person to take under either subsection 1
20 or 2 of this section, ~~the-portion-uninherited shall go to such~~
21 ~~persons-as-would-have-been-entitled-to-take-if-the-parents-of~~
22 ~~the-decedent-had-outlived-the-intestate-and-had-died-in~~
23 ~~possession-and-ownership-of-the-portion-thus-falling-to-their~~
24 ~~share, and-so-on, through-their-ascending-ancestors-and-their~~
25 ~~heirs~~ to the issue of the parents or either of them per
26 stirpes.

27 4. If ~~heirs-are-not-thus-found~~ there is no person to take
28 under subsection 1, 2 or 3 of this section, ~~the-portion~~
29 ~~uninherited shall go to the spouse of the intestate, and-if~~
30 ~~the-spouse-is-dead, then-to-the-heirs-of-the-spouse, according~~
31 ~~to-like-rules.--if-such-intestate-has-had-more-than-one-spouse~~
32 ~~who-either-died-or-survived-in-lawful-wedlock, it shall-be~~
33 ~~equally-divided-between-the-one-who-is-living-and-the-heirs-of~~
34 ~~those-who-are-dead, or-between-the-heirs-of-all-such-heirs,~~
35 ~~taking-per-stirpes-and-not-per-capita~~ but the decedent is

1 survived by one or more grandparents or issue of grandparents,
2 half the estate passes to the paternal grandparents, if both
3 survive, or to the surviving paternal grandparent, or to the
4 issue of the paternal grandparents if both are deceased, the
5 issue taking per stirpes, and the other half passes to the
6 maternal relatives in the same manner; but if there is no
7 surviving grandparent or issue of grandparent on one side, the
8 entire estate passes to the relatives of the other side in the
9 same manner as the half.

10 5. If there is no person to take under subsection 1, 2, 3,
11 or 4 of this section, the portion uninherited shall go to the
12 issue of the deceased spouse of the intestate, per stirpes.
13 If the intestate has had more than one spouse who died in
14 lawful wedlock, it shall be equally divided between the issue,
15 per stirpes, of those deceased spouses.

16 5 6. If there is no person who qualifies under either
17 subsection 1, 2, 3, or 4, or 5 of this section, the intestate
18 property shall escheat to the state of Iowa.

19 Sec. 5. Section 633.304, Code 1993, is amended by adding
20 the following new unnumbered paragraph after unnumbered
21 paragraph 1:

22 NEW UNNUMBERED PARAGRAPH. As used in this section, "heir"
23 means only such person as would, in an intestate estate, be
24 entitled to a share under subsection 1, 2, or 3 of section
25 633.219.

26 Sec. 6. Section 633.305, Code 1993, is amended by adding
27 the following new unnumbered paragraph after unnumbered
28 paragraph 1.

29 NEW UNNUMBERED PARAGRAPH. As used in this section, "heir"
30 means only such person as would, in an intestate estate, be
31 entitled to a share under subsection 1, 2, or 3 of section
32 633.219.

33 EXPLANATION

34 This bill provides as follows:

35 Section 1 requires requests for notice in probate to be

1 filed in triplicate, instead of duplicate, with one copy of
2 the request going to the personal representative and the
3 personal representative's attorney.

4 Sections 2 and 3 reduce to one-third, from all, the value
5 of the legal or equitable estates in real property which would
6 go to the spouse of a person who dies without a valid will.
7 Section 3 also provides that the statutory share going to a
8 surviving spouse and children who are not all from the
9 marriage to the surviving spouse includes one-sixth of the
10 value of any remaining interest in real property held by the
11 person who died without a valid will.

12 Section 4 makes changes in the manner in which the estate
13 of a person who dies without a valid will is distributed to
14 provide that heirs of the decedent be determined through the
15 decedent's grandparents and their issue. Section 4 also
16 provides that if a portion of the estate remains uninheritied,
17 it would pass to the issue of the deceased spouse of the
18 intestate.

19 Sections 5 and 6 change the definition of heir in sections
20 pertaining to notice, to conform to the changes made in
21 section 633.219.

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SENATE FILE 371

AN ACT

RELATING TO PROBATE, INCLUDING CERTAIN NOTICE PROVISIONS AND STATUTORY SHARES.

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

Section 1. Section 633.42, Code 1993, is amended to read as follows:

633.42 REQUESTS FOR NOTICE.

At any time after the issuance of letters testamentary or of administration upon a decedent's estate, any person interested in the estate may file with the clerk a written request, in duplicate triplicate, for notice of the time and place of all hearings in such estate for which notice is required by law, by rule of court, or by an order in such estate. Such The request for notice shall state the name and post-office address of such person and the name and post-office address of the attorney, if any, for the party requesting the notice. The clerk shall docket such the request, and transmit the duplicate duplicates to the personal representative of the estate of the decedent and to the personal representative's attorney of record, if any. Thereafter, the personal representative shall, unless

otherwise ordered by the court, serve, by ordinary mail, upon such person, or the person's said attorney, if any, a notice of each such hearing.

Sec. 2. Section 633.219, Code 1993, is amended to read as follows:

633.219 SHARE OF OTHERS THAN SURVIVING SPOUSE.

The portion part of the intestate estate remaining after the payment-of-the-debts-and-charges, and not distributed passing to the surviving spouse, as provided in this Code, or if there is no surviving spouse, then the remaining entire net estate after payment-of-the-debts-and-charges, shall descend and be distributed passes as follows:

1. in-equal-shares-to-the-decedent's-children, unless one or more of them is dead, in which case To the issue of such deceased child shall inherit the child's share in accordance with the rules herein prescribed; in-the-same-manner-as-though said child had outlived the child's parents the decedent per stirpes.

2. If there is no person to take under subsection 1 of this section, then to the surviving issue, to the parents in equal shares of the decedent equally; and if either parent is dead, the portion that would have gone to such deceased parent, shall go to the survivor.

3. If there is no person to take under either subsection 1 or 2 of this section, the portion-uninherited shall go to such persons as would have been entitled to take if the parents of the decedent had outlived the intestate and had died in possession and ownership of the portion thus falling to their share, and so on, through their ascending ancestors and their heirs to the issue of the parents or either of them per stirpes.

4. If heirs are not thus found there is no person to take under subsection 1, 2 or 3 of this section, the portion uninherited shall go to the spouse of the intestate; and if the spouse is dead, then to the heirs of the spouse, according

~~to like rules--if such intestate has had more than one spouse who either died or survived in lawful wedlock, it shall be equally divided between the one who is living and the heirs of those who are dead, or between the heirs of all such heirs, taking per stirpes and not per capita but the decedent is survived by one or more grandparents or issue of grandparents, half the estate passes to the paternal grandparents, if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking per stirpes, and the other half passes to the maternal relatives in the same manner; but if there is no surviving grandparent or issue of grandparent on one side, the entire estate passes to the relatives of the other side in the same manner as the half.~~

5. If there is no person to take under subsection 1, 2, 3, or 4 of this section, the portion uninheritd shall go to the issue of the deceased spouse of the intestate, per stirpes. If the intestate has had more than one spouse who died in lawful wedlock, it shall be equally divided between the issue, per stirpes, of those deceased spouses.

5 6. If there is no person who qualifies under either subsection 1, 2, 3, or 4, or 5 of this section, the intestate property shall escheat to the state of Iowa.

Sec. 3. Section 633.304, Code 1993, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 1:

NEW UNNUMBERED PARAGRAPH. As used in this section, "heir" means only such person as would, in an intestate estate, be entitled to a share under subsection 1, 2, or 3 of section 633.219.

Sec. 4. Section 633.305, Code 1993, is amended by adding the following new unnumbered paragraph after unnumbered paragraph 1:

NEW UNNUMBERED PARAGRAPH. As used in this section, "heir" means only such person as would, in an intestate estate, be

entitled to a share under subsection 1, 2, or 3 of section 633.219.

LEONARD L. BOSWELL
President of the Senate

HAROLD VAN MAANEN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 371, Seventy-fifth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 11, 1993

TERRY E. BRANSTAD
Governor