

Senate Study Bill 3143 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOGG)

A BILL FOR

1 An Act relating to wills including witness testimony,
2 distribution of property, and claims of personal
3 representatives, and including retroactive and other
4 applicability provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 633.295, Code 2014, is amended to read
2 as follows:

3 **633.295 Testimony of witnesses.**

4 The proof may be made by the oral or written testimony of
5 one or more of the subscribing witnesses to the will. If such
6 testimony is in writing, it shall be substantially in the
7 following form executed and sworn to before or after the death
8 of the decedent:

9 In the District Court of Iowa

10 In and for County

11 In the Matter of the Estate of

12, Deceased

13 Probate No.

14 Testimony of Subscribing

15 Witness on Probate of Will.

16 State of)

17 County) ss

18 I,, being first duly sworn, state:

19 I reside in the County of, State of; I knew
20 the identity of the testator on the day of (month),
21 ... (year), the date of the instrument, the original or exact
22 reproduction of which is attached hereto, now shown to me,
23 and purporting to be the last will and testament of the said
24, ~~deceased~~; I am one of the subscribing witnesses
25 to said instrument; at the said date of said instrument, I
26 knew the identity of, the other subscribing witness;
27 that said instrument was exhibited to me and to the other
28 subscribing witness by the testator, who declared the same to
29 be the testator's last will and testament, and was signed by
30 the testator at, in the County of, State of
31, on the date shown in said instrument, in the presence
32 of myself and the other subscribing witness; and the other
33 subscribing witness and I then and there, at the request of the
34 testator, in the presence of said testator and in the presence
35 of each other, subscribed our names thereto as witnesses.

1

2 Name of witness

3

4 Address

5 Subscribed and sworn to before me this ... day of

6 (month), ... (year)

7

.....

8

Notary Public in and for

9 (Stamp)

the State of

10 Sec. 2. Section 633.356, Code 2014, is amended to read as
11 follows:

12 **633.356 Distribution of property by affidavit.**

13 1. When the gross value of the decedent's personal property
14 that would otherwise be distributed by will or intestate
15 ~~succession does not exceed~~ is or has been, at any time since
16 the decedent's death, twenty-five thousand dollars or less
17 and there is no real property or the real property passes to
18 persons exempt from inheritance tax ~~pursuant to section 450.9~~
19 as joint tenants with ~~right~~ full rights of survivorship, and if
20 forty days have elapsed since the death of the decedent, ~~the a~~
21 ~~successor of the decedent~~ as defined in subsection 2 may, by
22 ~~filing~~ furnishing an affidavit prepared pursuant to subsection
23 3 or 8, and without procuring letters of appointment, do any of
24 the following with respect to one or more ~~particular~~ items of
25 such personal property:

26 a. Receive any ~~particular~~ item of tangible personal property
27 of the decedent.

28 b. Have any evidence of a debt, obligation, interest,
29 right, security, or chose in action belonging to the decedent
30 transferred.

31 c. Collect the proceeds from any life insurance policy or
32 any other item of property for which a beneficiary has not been
33 designated.

34 2. "~~Successor of the decedent~~" means:

35 a. If the decedent died testate, the reasonably

1 ascertainable beneficiary or beneficiaries who succeeded to
2 the ~~particular~~ item of property ~~of the decedent~~ under the
3 decedent's will. For the purposes of this subsection the
4 trustee of a trust created during the decedent's lifetime is a
5 beneficiary under the decedent's will if the trust succeeds to
6 the ~~particular item of~~ property under the decedent's will.

7 *b.* If the decedent died intestate, the reasonably
8 ascertainable person or persons who succeeded to the ~~particular~~
9 ~~item of~~ property ~~of the decedent~~ under the laws of intestate
10 succession of this state.

11 *c.* If the decedent received medical assistance benefits from
12 the state, the Iowa Medicaid agency that provided the benefits
13 is a successor pursuant to subsection 8.

14 3. *a.* To collect money, receive tangible personal
15 property, or have evidences of intangible personal property
16 transferred under this ~~chapter~~ section, the a successor of
17 ~~the decedent~~ shall furnish to the holder of the decedent's
18 property an affidavit under penalty of perjury stating all of
19 the following:

20 (1) The decedent's name, social security number, and ~~the~~
21 date and place of ~~the decedent's~~ death.

22 (2) That at least forty days have elapsed since the death
23 of the decedent, as shown by an attached certified copy of the
24 death certificate of the decedent.

25 (3) That the gross value of the decedent's personal property
26 that would otherwise be distributed by will or intestate
27 succession ~~does not exceed~~ is, or has been at any time since
28 the decedent's death, twenty-five thousand dollars or less
29 and there is no real property or the real property passes to
30 persons exempt from inheritance tax ~~pursuant to section 450.9~~
31 as joint tenants with ~~right~~ full rights of survivorship.

32 (4) A general description of the property of the decedent
33 that is to be paid, transferred, or delivered to or for the
34 benefit of each successor.

35 (5) The name, address, and ~~social security tax~~

1 ~~identification number of the successor of the decedent to the~~
2 ~~described property and relationship to the decedent of each~~
3 ~~successor, and whether the any successor is under a legal~~
4 ~~disability.~~

5 (6) If applicable pursuant to subsection 2, paragraph "a",
6 that the attached copy of the decedent's will is the last will
7 of the decedent and has been ~~admitted to probate or otherwise~~
8 ~~filed in~~ delivered to the office of a clerk of the district
9 court in accordance with Iowa law.

10 (7) That no persons other than ~~those~~ the successors listed
11 in the affidavit have a right to the interest of the decedent
12 in the described property.

13 (8) That the affiant requests that the described property
14 be paid, delivered, or transferred to ~~the successors of the~~
15 ~~decedent to the described property or for the benefit of each~~
16 successor.

17 (9) That the affiant affirms under penalty of perjury that
18 the affidavit is true and correct.

19 ~~b. More than one person~~ If there are two or more successors,
20 any of the successors may execute an affidavit under this
21 subsection.

22 4. a. If the decedent had evidence of ownership of the
23 property described in the affidavit and the holder of the
24 property would have the right to require presentation of the
25 evidence of ownership before the duty of the holder to pay,
26 deliver, or transfer the property to the decedent would have
27 arisen, the evidence of the ownership, if available, shall be
28 presented with the affidavit to the holder of the decedent's
29 property.

30 b. If the evidence of ownership is not presented to the
31 holder of the property, the holder may require, as a condition
32 for the payment, delivery, or transfer of the property, that
33 the ~~successor~~ affiant provide the holder with a bond in a
34 reasonable amount determined by the holder to be sufficient to
35 indemnify the holder against all liability, claims, demands,

1 loss, damages, costs, and expenses that the holder may incur
2 or suffer by reason of the payment, delivery, or transfer of
3 the property. This subsection does not preclude the holder
4 and the ~~successor~~ affiant from dispensing with the requirement
5 that a bond be provided, and instead entering into an agreement
6 satisfactory to the holder concerning the duty of the ~~successor~~
7 affiant to indemnify the holder.

8 *c.* Judgments rendered by any court in this state and
9 mortgages belonging to a decedent whose personal property is
10 being distributed pursuant to this section may, without prior
11 order of court, be released, discharged, or assigned, in whole
12 or in part, as to any ~~particular~~ property, and deeds may be
13 executed in performance of real estate contracts entered into
14 by the decedent, where an affidavit made pursuant to subsection
15 3 or 8 is filed in the office of the county recorder of the
16 county wherein any judgment, mortgage, or real estate contract
17 appears of record.

18 5. Reasonable proof of the identity of each successor ~~of the~~
19 ~~decedent~~ seeking distribution by virtue of the affidavit shall
20 be provided to the satisfaction of the holder of the decedent's
21 property.

22 6. *a.* If the requirements of this section are satisfied:

23 (1) The property described in the affidavit shall be paid,
24 delivered, or transferred to ~~the~~ or for the benefit of each
25 ~~successor of the decedent's interest in the property.~~

26 (2) A transfer agent of a security described in the
27 affidavit shall change registered ownership on the books of
28 the corporation from the decedent to ~~the person listed on the~~
29 ~~affidavit as the~~ or for the benefit of each successor ~~of the~~
30 ~~decedent's interest.~~

31 (3) The holder of the property may return the attached
32 certified copy of the decedent's death certificate to the
33 affiant.

34 *b.* If the holder of the decedent's property refuses to
35 pay, deliver, or transfer any property or evidence thereof to

1 or for the benefit of the successor of the decedent within a
2 reasonable time, ~~the~~ a successor may recover the property or
3 compel its payment, delivery, or transfer in an action brought
4 for that purpose against the holder of the property. If an
5 action is brought against the holder under this subsection,
6 the court shall award ~~attorney's~~ attorney fees to the person
7 bringing the action if the court finds that the holder of the
8 decedent's property acted unreasonably in refusing to pay,
9 deliver, or transfer the property to or for the person benefit
10 of the successor as required by this subsection.

11 7. a. If the requirements of this section are satisfied,
12 receipt by the holder of the decedent's property of the
13 affidavit under subsection 3 or 8 constitutes sufficient
14 acquittance for the payment of money, delivery of property, or
15 transferring the registered ownership of property pursuant to
16 this ~~chapter~~ section and discharges the holder from any further
17 liability with respect to the money or property. The holder
18 may rely in good faith on the statements in the affidavit and
19 has no duty to inquire into the truth of any statement in the
20 affidavit.

21 b. If the requirements of this section are satisfied, the
22 holder is not liable for any debt owed by the decedent by
23 reason of paying money, delivering property, or transferring
24 registered ownership of property pursuant to this ~~chapter~~
25 section. If an action is brought against the holder under this
26 section, the court shall award attorney fees to the holder if
27 the court finds that the holder acted reasonably in paying,
28 delivering, or transferring the property as required by this
29 section.

30 8. a. ~~When a deceased distributee is entitled to money~~
31 ~~or property claimed in an affidavit presented under this~~
32 ~~section with respect to a deceased person whose estate is~~
33 ~~being administered in this state, the personal representative~~
34 ~~of the person whose estate is being administered shall~~
35 ~~present the affidavit to the court in which the estate is~~

1 ~~being administered. The court shall direct the personal~~
2 ~~representative to pay the money or deliver the property to the~~
3 ~~person identified by the affidavit as the successor of the~~
4 ~~deceased distributee to the extent that the court determines~~
5 ~~that the deceased distributee was entitled to the money or~~
6 ~~property under the will or the laws of intestate succession.~~
7 If an affidavit, executed under this section for a deceased
8 distributee of an estate being administered in this state, is
9 filed with the clerk of the district court in which the estate
10 is being administered, the court shall direct the personal
11 representative to pay the money or deliver the property to
12 or for the benefit of each successor to the extent the court
13 determines that the deceased distributee would have been
14 entitled to money or property of the estate.

15 *b.* When the department of human services is entitled to
16 money or property of a decedent pursuant to section 249A.53,
17 subsection 2, and no affidavit has been presented by a
18 ~~successor of the decedent~~ as defined in subsection 2, paragraph
19 "a" or "b", within ninety days of the date of the decedent's
20 death, the funds in the account or other property, up to the
21 amount of the claim of the department, shall be paid to the
22 department upon presentation by the department or an entity
23 designated by the department of an affidavit to the holder
24 of the decedent's property. Such affidavit shall include
25 the information specified in subsection 3, except that the
26 department may submit proof of payment of funeral expenses as
27 verification of the decedent's death instead of a certified
28 copy of the decedent's death certificate. The amount of the
29 department's claim shall also be included in the affidavit,
30 which shall entitle the department to receive the funds as
31 ~~a successor of the decedent.~~ The department shall issue a
32 refund within sixty days to any claimant with a superior
33 priority pursuant to section 633.425, if notice of such claim
34 is given to the department, or to the entity designated by
35 the department to receive notice, within one year of the

1 department's receipt of funds. This paragraph shall apply to
2 funds or property of the decedent transferred to the custody
3 of the treasurer of state as unclaimed property pursuant to
4 chapter 556.

5 9. The procedure provided by this section may be used only
6 if no administration of the decedent's estate is pending.

7 10. Upon receipt of an affidavit under subsection 3 and
8 reasonable proof under subsection 5 of the identity of each
9 successor seeking distribution by virtue of the affidavit, the
10 holder of the property shall disclose to the affiant whether
11 the value of the property held by the holder is, or has been
12 at any time since the decedent's death, twenty-five thousand
13 dollars or less. An affidavit furnished for the purpose of
14 determining whether the value of the property is, or has been
15 at any time since the decedent's death, twenty-five thousand
16 dollars or less need not contain the language required under
17 subsection 3, paragraph "a", subparagraph (3), but shall state
18 that the affiant reasonably believes that the gross value
19 of the decedent's personal property that would otherwise be
20 distributed by will or intestate succession is, or has been
21 at any time since the decedent's death, twenty-five thousand
22 dollars or less and there is no real property or the real
23 property passes to persons exempt from inheritance tax as joint
24 tenants with full rights of survivorship.

25 Sec. 3. Section 633.432, Code 2014, is amended to read as
26 follows:

27 **633.432 Allowance or disallowance of claim of personal**
28 **representative.**

29 1. The A temporary administrator appointed pursuant to
30 section 633.431 shall, after upon investigation, file a report
31 with the court recommending the allowance or disallowance
32 of such a claim filed pursuant to section 633.431. The
33 recommendation may, but need not, include information on the
34 substantive merits of allowing or disallowing the claim.
35 The recommendation shall include a statement that, upon

1 investigation, a legitimate dispute either does or does not
2 exist as to such a claim.

3 2. Unless the court allows the claim, ~~it~~ the claim shall
4 ~~then~~ be disposed of as a contested claim in accordance with the
5 provisions of sections 633.439 to 633.448.

6 Sec. 4. 2013 Iowa Acts, chapter 33, section 9, is amended
7 to read as follows:

8 SEC. 9. APPLICABILITY.

9 1. The sections of this Act amending sections 633.273A~~r~~ and
10 633.279~~r~~ and ~~633.295~~ apply to estates of decedents dying on or
11 after July 1, 2013.

12 1A. The section of this Act amending section 633.295 applies
13 to wills executed on or after July 1, 2013.

14 2. The sections of this Act amending sections 633.290 and
15 635.1 apply to petitions filed on or after July 1, 2013.

16 3. The section of this Act amending section 633.575 applies
17 to all judicial proceedings held on or after July 1, 2013, in
18 which an order for the appointment of a conservatorship is
19 sought or has been issued.

20 4. The section of this Act amending section 633A.4504
21 applies retroactively to all reports and accountings provided
22 by a trustee, unless an exception applies, to one year from
23 July 1, 2000.

24 Sec. 5. APPLICABILITY. The section of this Act amending
25 section 633.295 applies to wills executed on or after July 1,
26 2014.

27 Sec. 6. RETROACTIVE APPLICABILITY. The section of this Act
28 amending 2013 Iowa Acts, chapter 33, section 9, is applicable
29 retroactively to July 1, 2013.

30 EXPLANATION

31 The inclusion of this explanation does not constitute agreement with
32 the explanation's substance by the members of the general assembly.

33 This bill relates to wills including witness testimony,
34 distribution of property, and claims of personal
35 representatives, and includes applicability provisions.

1 PROBATE OF WILLS — TESTIMONY OF WITNESSES TO WILL

2 EXECUTION. The bill amends Code section 633.295 (affidavit
3 form for written testimony by witnesses to a will) to allow
4 execution of a self-proving will affidavit before or after the
5 decedent's death and not just after the decedent's death. This
6 amendment applies to wills executed on or after July 1, 2014.

7 The bill also amends an applicability provision in 2013
8 Iowa Acts, chapter 33, §9 (HF 591) to this same Code section
9 providing that witnesses to a will need only know the identity
10 of the testator and other witnesses. This amendment also
11 applies retroactively to wills executed on or after July 1,
12 2013, and not to estates of decedents dying on or after July 1,
13 2013.

14 TITLE AND POSSESSION OF DECEDENT'S PROPERTY — DISTRIBUTION
15 OF PROPERTY BY AFFIDAVIT. The bill amends Code section 633.356
16 relating to the distribution of property by affidavit where
17 the gross value of a decedent's personal property that would
18 otherwise be distributed by will or intestate succession is
19 \$25,000 or less and there is no real property or the property
20 passes to persons exempt from inheritance tax as joint tenants
21 with right of survivorship. In this situation currently, a
22 successor of the decedent may, by filing an affidavit, receive
23 any particular item of tangible personal property of the
24 decedent, have any evidence of a debt, obligation, interest,
25 right, security, or chose in action belonging to the decedent
26 transferred, and collect the proceeds from any life insurance
27 policy or any other item of property for which a beneficiary
28 has not been designated.

29 The amendments to this section specify this Code section
30 is applicable when the gross value of the decedent's personal
31 property is, or has been at any time since the decedent's
32 death, \$25,000 or less and there is no personal property or
33 the property passes to persons exempt from inheritance tax
34 as joint tenants with full rights of survivorship; define a
35 successor to include a reasonably ascertainable beneficiary

1 if decedent died testate (with a will), or a reasonably
2 ascertainable person if decedent died intestate (without
3 a will), or an Iowa Medicaid agency that provided medical
4 assistance benefits to the decedent; amend certain requirements
5 relating to information contained in the affidavit to include
6 all of the following: a general rather than a particular
7 description of the decedent's property, a successor's tax
8 identification number rather than social security number, and
9 the relationship of each successor to the decedent, that a
10 copy of the decedent's will if applicable has been delivered
11 to the clerk of the district court, that the affiant (person
12 making and signing the affidavit) has requested that the
13 appropriate property be paid, delivered, or transferred to or
14 for the benefit of each successor; that when there are two or
15 more successors only one of the successors is required to sign
16 the affidavit; that the holder of the property (person having
17 possession, custody, or control of another's property) may
18 return a certified copy of the decedent's death certificate
19 to the affiant; that attorney fees may be awarded to a holder
20 if the court finds the holder acted reasonably in paying,
21 delivering, or transferring the requisite property; that when
22 an affidavit is filed with the clerk of the district court in
23 which the estate is being administered, the court shall direct
24 the personal representative to pay the money or deliver the
25 property to or for the benefit of each successor to the extent
26 the court determines that the deceased distributee would have
27 been entitled to money or property of the estate; and that
28 an affidavit can be used to ascertain whether the value of a
29 decedent's property exceeds the statutory \$25,000 limit.

30 CLASSIFICATION, ALLOWANCE, AND PAYMENT OF DEBTS AND
31 CHARGES — TEMPORARY ADMINISTRATOR REPORT. The bill
32 amends Code section 633.432 relating to the allowance or
33 disallowance of a personal representative's claim (where
34 the personal representative is a creditor of the decedent)
35 against a decedent's estate and the contents of a temporary

S.F. _____

1 administrator's report to the court. The bill allows a
2 temporary administrator to limit the administrator's report
3 to a recommendation allowing or disallowing the claim by a
4 statement that, upon investigation, a legitimate dispute either
5 does or does not exist as to such a claim.