

Sec. 3. Section 663A.7, Code 1981, is amended to read as follows:

663A.7 COURT TO HEAR APPLICATION. The application shall be heard in, and before any judge of, the court in which the conviction or sentence took place. However, if the applicant is seeking relief under section 663A.2, subsection 6, the application shall be heard in, and before any judge of the court of the county in which the applicant is being confined. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings including pretrial and discovery procedures are available to the parties. The court may receive proof of affidavits, depositions, oral testimony, or other evidence, and may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

Approved May 4, 1981

CHAPTER 199

SMALL ESTATE ADMINISTRATION

H. F. 822

AN ACT relating to the administration of small estates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 635.1, Code 1981, is amended to read as follows:

635.1 WHEN APPLICABLE.

1. When the ~~total~~ gross value of the probate and nonprobate property of a decedent subject to the jurisdiction of this state ~~including--life--insurance payable--to--the--estate--but--not--including--other--life--insurance~~ does not exceed ~~ten~~ thirty thousand dollars in property subject to taxation under section 450.3, if the decedent dies intestate and is survived by a spouse or children or both, or if the decedent leaves a last will and testament and that will is admitted to probate but there is no present administration and the only beneficiaries are a spouse or children or both, then upon the petition of the spouse or a child of the decedent ~~who is a resident of the state of Iowa~~, the clerk shall issue to a resident of the state of Iowa designated by the petitioner letters of appointment of executor or administrator for administration of a small estate, if either of the following occur:

a. The decedent dies intestate and is survived by a spouse, or children, or both.

*According to enrolled Act

b. The decedent leaves a last will and testament and that will is admitted to probate but there is no present administration and the only beneficiaries are a spouse, or children, or both.

2. When the ~~total gross~~ value of the probate and nonprobate property of a decedent subject to the jurisdiction of this state ~~including--life--insurance payable--to--the--estate--but--not--including--other--life--insurance~~ does not exceed ten thousand dollars in property subject to taxation under section 450.3, if the--decedent--dies--intestate--without--a--surviving--spouse--or--issue--and--with--a--surviving--parent--or--parents--or--if--the--decedent--dies--without--a--surviving--spouse--or--issue--and--leaves--a--last--will--and--testament--and--that--will--is--admitted--to--probate--but--there--is--no--present--administration--and--the--only--beneficiaries--are--a--surviving--parent--or--parents--then upon the petition of a parent of the decedent who is a resident of the state of Iowa the clerk shall issue to a resident of the state of Iowa designated by the petitioner, letters of appointment as executor or administrator for administration of a small estate if either of the following occur:

a. The decedent dies intestate without a surviving spouse or issue but with a surviving parent or parents.

b. The decedent dies without a surviving spouse or issue and leaves a last will and testament and that will is admitted to probate but there is no present administration and the only beneficiaries are a surviving parent or parents.

3. When the entire estate of the decedent does not exceed the sum of one thousand dollars after deducting the debts, as defined in chapter 450, upon the petition of a person related within the fourth degree of consanguinity to the decedent, the clerk shall issue to a resident of the state of Iowa designated by the petitioner, letters of appointment as executor or administrator for administration of a small estate if either of the following occur:

a. The decedent dies intestate without a surviving spouse, issue, or parent, but with heirs that are all within the fourth degree of consanguinity.

b. The decedent dies without a surviving spouse, issue, or parent, and leaves a last will and testament and that will is admitted to probate but there is no present administration and the only beneficiaries are surviving persons related to the decedent within the fourth degree of consanguinity.

Sec. 2. Section 635.2, subsection 2, Code 1981, is amended to read as follows:

2. The name and address of the surviving spouse, if any, the name and address of each child of the decedent, and the name and address of each parent of the decedent, if the parent is an heir or beneficiary of the decedent, unless none are beneficiaries under the will of the decedent and the name and address of each relative within the fourth degree of consanguinity of the decedent who is an heir or beneficiary of the decedent, unless none are beneficiaries under the will of the decedent.

Sec. 3. Section 635.2, subsection 4, Code 1981, is amended to read as follows:

4. A statement that the probate and nonprobate property of the decedent subject to the jurisdiction of this state ~~including-life-insurance-payable-to-the-estate-but-not-including-other-life-insurance~~ does not have an aggregate gross value of more than the amount permitted under the provisions of section 635.1.

Sec. 4. Section 635.3, Code 1981, is amended to read as follows:

635.3 POSSESSION OF ESTATE. The letters of appointment of the ~~personal representative~~ executor or administrator of a small estate shall entitle the ~~personal--representative~~ executor or administrator to possession of any property of the estate.

Sec. 5. Section 635.4, Code 1981, is amended to read as follows:

635.4 TURNING OVER ASSETS TO REPRESENTATIVE EXECUTOR OR ADMINISTRATOR. Any debtor, financial institution, or other possessor of property shall deliver to the ~~personal-representative~~ executor or administrator of a small estate all property of the estate in its possession unless the value of the property exceeds ~~ten-thousand-dollars~~ the amount permitted the small estate under the applicable provision of section 635.1. The possessor of property shall be exonerated from any liability for the delivery of property to the ~~personal---representative~~ executor or administrator and shall not be responsible for its disposition after the delivery.

Sec. 6. Section 635.5, Code 1981, is amended to read as follows:

635.5 TRANSFER OF STOCK OR SECURITIES. The letters of appointment are authority for the transfer of stock or other securities to the persons entitled by law to the stock or other securities as stated to the transfer agent by the ~~personal-representative~~ executor or administrator for the small estate. The transfer agent shall be exonerated from all liability for making the transfer.

Sec. 7. Section 635.6, Code 1981, is amended to read as follows:

635.6 PROPERTY OF PERISHABLE NATURE. The ~~personal---representative~~ executor or administrator of a small estate may sell personal property of a perishable nature and personal property for which there is a regularly established market without order of the court. ~~The-personal-representative has-no-other-power-to-sell-property-of-the-estate.~~

Sec. 8. Section 635.7, Code 1981, is amended to read as follows:

635.7 REPORT AND INVENTORY--SHOWING GREATER GROSS VALUE. The ~~personal representative~~ executor or administrator is required to file the report and inventory for which provision is made in section 633.361. Nothing in sections 635.1 to 635.3 shall exempt the ~~personal-representative~~ executor or administrator from complying with the requirements of ~~section~~ sections 422.27, 450.22, or 450.58, or the clerk from complying with the requirements of section 633.481. However, the executor or administrator is exempted from filing the certificate of the county treasurer in the county in which the estate is pending that all personal taxes due and to become due have been paid in full. If the inventory and report shows assets subject to the jurisdiction of this state ~~including-life-insurance-payable-to-the-estate-but-not-including-other-life-insurance~~ which exceed the total gross value of ~~ten thousand--dollars~~ the amount permitted the small estate under the applicable provision of section 635.1, the clerk shall terminate the letters issued

under section 635.1 without prejudice to the rights of persons who delivered property as permitted under section 635.3. The ~~personal--representative~~ executor or administrator shall then be required to petition for administration of the estate.

Sec. 9. Section 635.8, Code 1981, is amended to read as follows:

635.8 FAILURE-TO-TERMINATE--LIABILITY CLOSING BY SWORN STATEMENT.

1. Unless an interested person petitions for administration of the estate on a basis other than for a small estate within one year after letters of administration for a small estate are issued, if those letters of administration are not terminated under the provisions of section 635.7, any property of the estate shall then be free of debts and charges. However, the ~~personal--representative~~ executor or administrator of the small estate shall not be exonerated from debts and charges of the estate except as otherwise provided in this chapter, and shall be subject to personal liability to the extent provided in section 635.2, subsection 5, for the period of time otherwise provided by law.

2. The executor or administrator shall file with the court a closing statement within nine months from the date of issuance of the letters of appointment, and the closing statement shall be verified or affirmed under penalty of perjury, stating all of the following:

a. To the best knowledge of the person, the gross value of the estate subject to the jurisdiction of this state does not exceed the amount permitted the small estate under the applicable provision of section 635.1.

b. The estate has been fully administered, dispersed, and distributed to persons entitled thereto and a description of the disbursement and distribution of the estate including an accurate description of all the real estate of which the decedent died seized, stating the nature and extent of the interest therein and its disposition.

c. A copy of the closing statement has been sent to all distributees of the estate and to all known creditors and a full account in writing of the administration of the estate has been furnished to the distributees whose interests are affected.

3. If no actions or proceedings involving the estate are pending in the court one year after the closing statement is filed, the estate shall close and the clerk shall discharge the administrator or executor.

4. The closing statement shall include a statement as to the amount of fees paid for services rendered by the executor or administrator and the executor's or administrator's attorney in administration of the estate. The fees for the executor or administrator and the executor's or administrator's attorney shall not be in excess of the fees permitted by section 633.197.

5. A closing statement filed under this section has the same effect as final settlement of the estate under chapter 633.

Sec. 10. Section 635.9, Code 1981, is amended to read as follows:

635.9 PETITION FOR ADMINISTRATION ON OTHER BASIS. At any time within one year after letters of administration are issued for a small estate, any interested person may petition for appointment of an executor or administrator for administration of the estate other than as a small estate. In that event the clerk shall notify the person holding letters of

appointment for administration of a small estate by ordinary mail not less than ten days before a hearing on the petition. The notice shall be directed to the ~~personal-representative~~ executor or administrator of the small estate at ~~his~~ the executor's or administrator's last known address as reflected in the petition filed under section 635.2 or the report and inventory filed under section 633.361, whichever is filed later.

Sec. 11. Chapter 635, Code 1981, is amended by adding the following new section:

NEW SECTION. SALE OF PROPERTY. The executor or administrator of a small estate may sell property of the estate if the sale is in compliance with sections 633.383 through 633.401 inclusive.

Sec. 12. Chapter 635, Code 1981, is amended by adding the following new section:

NEW SECTION. NOTICE--CLAIMS. The executor or administrator of a small estate may publish notice pursuant to section 633.230 or section 633.304. Creditors having claims against the estate must file them with the clerk within six months from the second publication of the notice. The notice shall have the same force and effect as in chapter 633.

Sec. 13. Chapter 635, Code 1981, is amended by adding the following new section:

NEW SECTION. MINIMUM TIME BEFORE DISTRIBUTION. The executor or administrator shall not distribute property of the estate not exempt from execution, prior to sixty days after the issuance of the letters of appointment.

Approved May 19, 1981

CHAPTER 200
GARNISHMENT IN SCHOOL DISTRICT
S. F. 230

AN ACT relating to the person to whom notice of garnishment is served in a school district.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 642.2, subsection 4, Code 1981, is amended to read as follows:

4. Service upon the garnishee shall be made by serving an original notice with a copy of the judgment against the defendant, and with a copy of the questions specified in section 642.5, by certified mail or by personal service upon the attorney general, county attorney, city attorney, secretary of the school district, or ~~ethe~~ legal counsel of the appropriate governmental unit. The garnishee shall be required to answer within thirty days following receipt of the notice.

Approved May 8, 1981