

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 687

Introduced by Wightman, 36.

Read first time January 06, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to decedents' estates; to amend sections
2 30-2322, 30-2323, and 30-2325, Reissue Revised Statutes
3 of Nebraska; to change the amount of the homestead
4 allowance, exempt property, and family allowance; and to
5 repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2322, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 30-2322 A surviving spouse of a decedent who was
4 domiciled in this state is entitled to a homestead allowance
5 of seven thousand five hundred dollars for a decedent who dies
6 before January 1, 2011, and twenty thousand dollars for a decedent
7 who dies on or after January 1, 2011. If there is no surviving
8 spouse, each minor child and each dependent child of the decedent
9 is entitled to a homestead allowance amounting to ~~seven thousand~~
10 ~~five hundred dollars~~ the amount allowed for a surviving spouse
11 divided by the number of minor and dependent children of the
12 decedent. The homestead allowance is exempt from and has priority
13 over all claims against the estate except for costs and expenses
14 of administration. Homestead allowance is in addition to any share
15 passing to the surviving spouse or minor or dependent child by
16 the will of the decedent unless otherwise provided therein, by
17 intestate succession or by way of elective share.

18 Sec. 2. Section 30-2323, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 30-2323 (1) In addition to the homestead allowance, the
21 surviving spouse of a decedent who was domiciled in this state
22 is entitled from the estate to value not exceeding five thousand
23 dollars for a decedent who dies before January 1, 2011, and twelve
24 thousand five hundred dollars for a decedent who dies on or after
25 January 1, 2011, in excess of any security interests therein

1 in household furniture, automobiles, furnishings, appliances, and
2 personal effects. If there is no surviving spouse, children of the
3 decedent are entitled jointly to the same value unless the decedent
4 has provided in his or her will that one or more of such children
5 shall be disinherited, in which case only those children not so
6 disinherited shall be so entitled. For purposes of this section,
7 disinherited means providing in one's will that a child shall take
8 nothing or a nominal amount of ten dollars or less from the estate.

9 (2) If encumbered chattels are selected and if the
10 value in excess of security interests, plus that of other exempt
11 property, is less than ~~five thousand dollars,~~ the amount allowed
12 under subsection (1) of this section, or if there is not ~~five~~
13 ~~thousand dollars~~ that amount worth of exempt property in the
14 estate, the spouse or children are entitled to other assets of
15 the estate, if any, to the extent necessary to make up the ~~five~~
16 ~~thousand dollars value.~~ amount allowed under subsection (1) of this
17 section. Rights to exempt property and assets needed to make up a
18 deficiency of exempt property have priority over all claims against
19 the estate except for costs and expenses of administration, and
20 except that the right to any assets to make up a deficiency of
21 exempt property shall abate as necessary to permit prior payment of
22 homestead allowance and family allowance.

23 (3) These rights are in addition to any benefit or share
24 passing to the surviving spouse by the will of the decedent unless
25 otherwise provided therein, by intestate succession, or by way of

1 elective share. These rights are in addition to any benefit or
2 share passing to the surviving children by intestate succession and
3 are in addition to any benefit or share passing by the will of
4 the decedent to those surviving children not disinherited unless
5 otherwise provided in the will.

6 Sec. 3. Section 30-2325, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 30-2325 If the estate is otherwise sufficient, property
9 specifically devised is not used to satisfy rights to homestead and
10 exempt property. Subject to this restriction, the surviving spouse,
11 the guardians of the minor children, or children who are adults
12 may select property of the estate as homestead allowance and exempt
13 property. After giving such notice as the court may require in a
14 proceeding initiated under the provisions of section 30-2405, the
15 personal representative may make these selections if the surviving
16 spouse, the children or the guardians of the minor children are
17 unable or fail to do so within a reasonable time or if there are
18 no guardians of the minor children. The personal representative
19 may execute an instrument or deed of distribution to establish
20 the ownership of property taken as homestead allowance or exempt
21 property. ~~He or she~~ The personal representative may determine the
22 family allowance in a lump sum not exceeding nine thousand dollars
23 for a decedent who dies before January 1, 2011, and twenty thousand
24 dollars for a decedent who dies on or after January 1, 2011, or
25 periodic installments not exceeding seven hundred fifty dollars per

1 month for one year for a decedent who dies before January 1, 2011,
2 and one thousand six hundred sixty-six dollars and sixty-seven
3 cents per month for one year, and for a decedent who dies on or
4 after January 1, 2011. The personal representative may disburse
5 funds of the estate in payment of the family allowance and any
6 part of the homestead allowance payable in cash. The personal
7 representative or any interested person aggrieved by any selection,
8 determination, payment, proposed payment, or failure to act under
9 this section may petition the court for appropriate relief, which
10 relief may provide a family allowance larger or smaller than
11 that which the personal representative determined or could have
12 determined.

13 The homestead allowance, the exempt property, and
14 the family allowance as finally determined by the personal
15 representative or by the court, shall vest in the surviving spouse
16 as of the date of decedent's death, as a vested indefeasible right
17 of property, shall survive as an asset of the surviving spouse's
18 estate if unpaid on the date of death of such surviving spouse, and
19 shall not terminate upon the death or remarriage of the surviving
20 spouse.

21 Sec. 4. Original sections 30-2322, 30-2323, and 30-2325,
22 Reissue Revised Statutes of Nebraska, are repealed.