

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 847

Introduced by Ebke, 32.

Read first time January 05, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to wills; to amend section 30-2316, Reissue
- 2 Revised Statutes of Nebraska; to change provisions relating to
- 3 waiver of certain rights of surviving spouse; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-2316, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 30-2316 (a) The right of election of a surviving spouse and the
4 rights of the surviving spouse to homestead allowance, exempt property,
5 and family allowance, or any of them, may be waived, wholly or partially,
6 before or after marriage, by a written contract, agreement, or waiver
7 signed by the surviving spouse.

8 (b) A surviving spouse's waiver is not enforceable if the surviving
9 spouse proves that:

10 (1) he or she did not execute the waiver voluntarily; or

11 (2) the waiver was unconscionable when it was executed and, before
12 execution of the waiver, he or she:

13 (i) was not provided a fair and reasonable disclosure of the
14 property or financial obligations of the decedent;

15 (ii) did not voluntarily and expressly waive, in writing, any right
16 to disclosure of the property or financial obligations of the decedent
17 beyond the disclosure provided; and

18 (iii) did not have, or reasonably could not have had, an adequate
19 knowledge of the property or financial obligations of the decedent.

20 (c) An issue of unconscionability of a waiver is for decision by the
21 court as a matter of law.

22 (d) Unless it provides to the contrary, a waiver of "all rights", or
23 equivalent language, in the property or estate of a present or
24 prospective spouse or a complete property settlement entered into after
25 or in anticipation of separation, divorce, or annulment is a waiver of
26 all rights to elective share, homestead allowance, exempt property, and
27 family allowance by each spouse in the property of the other and a
28 renunciation by each of all benefits that would otherwise pass to him or
29 her from the other by intestate succession or by virtue of any will
30 executed before the waiver or property settlement.

31 Sec. 2. Original section 30-2316, Reissue Revised Statutes of

1 Nebraska, is repealed.