

H.11

Introduced by Representatives Flory of Pittsford and Jewett of Ripton

Referred to Committee on

Date:

Subject: Decedents' estates and fiduciary relations; descent and distribution;
descent and survivors' rights

Statement of purpose: This bill proposes to restate and make changes to the
intestacy statutes. It allows a surviving spouse to waive the provisions of the
decedent's will and elect to take one-half of the decedent's estate. It raises the
amount of the homestead exemption from \$75,000.00 to \$125,000.00. Further,
the act provides a mechanism for a person to transfer the interest in a vehicle
upon his or her death.

AN ACT RELATING TO THE DISPOSITION OF PROPERTY UPON
DEATH, TRANSFER OF INTEREST IN VEHICLE UPON DEATH,
AND HOMESTEAD EXEMPTION

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. REPEAL

Chapters 41, 43, and 45 of Title 14 are repealed.

1 Sec. 2. 14 V.S.A. chapter 42 is added to Part 2 to read:

2 CHAPTER 42. DESCENT AND SURVIVORS' RIGHTS

3 Subchapter 1. General Provisions

4 § 301. INTESTATE ESTATE

5 (a) Any part of a decedent's estate not effectively disposed of by will
6 passes by intestate succession to the decedent's heirs, except as modified by
7 the decedent's will.

8 (b) A decedent's will may expressly exclude or limit the right of an
9 individual or a class to inherit property. If such an individual or member of
10 such a class survives the decedent, the share of the decedent's intestate estate
11 which would have passed to that individual or member of such a class passes
12 subject to any such limitation or exclusion set forth in the will.

13 (c) Nothing in this section shall preclude the surviving spouse of the
14 decedent from making the election and receiving the benefits provided by
15 section 319 of this title.

16 § 302. DOWER AND CURTESY ABOLISHED

17 The estates of dower and curtesy are abolished.

18 § 303. AFTERBORN HEIRS

19 For purposes of this chapter and chapter 1 of this title relating to wills, an
20 individual in gestation at a particular time is treated as living at that time if the
21 individual lives 120 hours or more after birth.

1 Subchapter 2. Survivors' Rights and Allowances

2 § 311. SHARE OF SURVIVING SPOUSE

3 After payment of the debts, funeral charges, and expenses of administration,
4 the intestate share of the decedent's surviving spouse is as follows:

5 (1) The surviving spouse shall receive the entire intestate estate if no
6 descendant of the decedent survives the decedent or if all of the decedent's
7 surviving descendants are also descendants of the surviving spouse.

8 (2) In the event there shall survive the decedent one or more
9 descendants of the decedent, who are not descendants of the surviving spouse
10 and are not excluded by the decedent's will from inheriting from the decedent,
11 the surviving spouse shall receive one-half of the intestate estate.

12 § 312. SURVIVING SPOUSE TO RECEIVE HOUSEHOLD GOODS

13 Upon motion, the surviving spouse of a decedent may receive out of the
14 decedent's estate all furnishings and furniture in the decedent's household
15 when the decedent leaves no descendants who object. If any objection is made
16 by any of the descendants, the court shall decide what, if any, of such
17 personalty shall pass under this section. Goods and effects so assigned shall be
18 in addition to the distributive share of the estate to which the surviving spouse
19 is entitled under other provisions of law. In making a determination pursuant
20 to this section, the court may consider the length of the decedent's marriage,

1 the sentimental and monetary value of the property, and the source of the
2 decedent's interest in the property.

3 § 313. SURVIVING SPOUSE; VESSEL, SNOWMOBILE, OR

4 ALL-TERRAIN VEHICLE

5 Whenever the estate of a decedent who dies intestate consists principally of
6 a vessel, snowmobile, or all-terrain vehicle, the surviving spouse shall be
7 deemed to be the owner of the vessel, snowmobile, or all-terrain vehicle, and
8 title to the vessel, snowmobile, or all-terrain vehicle shall automatically pass to
9 the surviving spouse. The surviving spouse may register the vessel,
10 snowmobile, or all-terrain vehicle pursuant to section 3816 of Title 23.

11 § 314. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE

12 (a) The balance of the intestate estate not passing to the decedent's
13 surviving spouse under section 311 of this title passes to the decedent's
14 descendants by right of representation.

15 (b) If there is no taker under subsection (a) of this section, the intestate
16 estate passes in the following order:

17 (1) to the decedent's parents equally if both survive or to the surviving
18 parent;

19 (2) to the decedent's siblings or the descendants of any deceased
20 siblings by right of representation;

1 (3) one-half of the intestate estate to the decedent's paternal
2 grandparents equally if they both survive or to the surviving paternal
3 grandparent and one-half of the intestate estate to the decedent's maternal
4 grandparents equally if they both survive or to the surviving maternal
5 grandparent and if decedent is survived by a grandparent, or grandparents on
6 only one side, to that grandparent or those grandparents;

7 (4) in equal shares to the next of kin in equal degree.

8 (c) If property passes under this section by right of representation, the
9 property shall be divided into as many equal shares as there are children or
10 siblings of the decedent, as the case may be, who either survive the decedent or
11 who predecease the decedent leaving surviving descendants.

12 § 315. PARENT AND CHILD RELATIONSHIP

13 For the purpose of intestate succession, an individual is the child of his or
14 her parents, regardless of their marital status, but a parent shall not inherit from
15 a child unless the parent has openly acknowledged the child and not refused to
16 support the child. The parent and child relationship may be established in
17 parentage proceedings under subchapter 3A of chapter 5 of Title 15.

18 § 316. SUPPORT OF SURVIVING SPOUSE AND FAMILY DURING

19 SETTLEMENT

20 The probate court may make reasonable allowance for the expenses of
21 maintenance of the surviving spouse and minor children or either, constituting

1 the family of a decedent, out of the personal estate or the income of real or
2 personal estate from date of death until settlement of the estate, but for no
3 longer a period than until their shares in the estate are assigned to them or, in
4 case of an insolvent estate, for not more than eight months after administration
5 is granted. This allowance may take priority, in the discretion of the court,
6 over debts of the estate.

7 § 317. ALLOWANCE TO CHILDREN BEFORE PAYMENT OF DEBTS

8 When a person dies leaving children under 18 years of age, an allowance
9 may be made for the necessary maintenance of such children until they become
10 18 years of age. Such allowance shall be made before any distribution of the
11 estate among creditors, heirs, or beneficiaries by will.

12 § 318. ALLOWANCE TO CHILDREN AFTER PAYMENT OF DEBTS

13 Before any partition or division of an estate among the heirs or beneficiaries
14 by will, an allowance may be made for the necessary expenses of the support
15 of the children of the decedent under 18 years of age until they arrive at that
16 age. The probate court may order the executor or administrator to retain
17 sufficient estate assets for that purpose, except where some provision is made
18 by will for their support.

19 § 319. WAIVER OF WILL BY SURVIVING SPOUSE

20 (a) A surviving spouse may waive the provisions of the decedent's will and
21 in lieu thereof elect to take one-half of the balance of the estate, after the

1 payment of claims and expenses.

2 (b) The surviving spouse must be living at the time this election is made. If
3 the surviving spouse is mentally disabled and cannot make the election
4 personally, a guardian or attorney in fact under a valid durable power of
5 attorney may do so.

6 § 320. EFFECT OF DIVORCE ORDER

7 A final divorce order from any state shall have the effect of nullifying a gift
8 by will or inheritance by operation of law to an individual who was the
9 decedent's spouse at the time the will was executed if the decedent was no
10 longer married to that individual at the time of death, unless his or her will
11 specifically states to the contrary.

12 § 321. CONVEYANCES TO DEFEAT SPOUSE'S INTEREST

13 A voluntary transfer of any property by an individual during marriage,
14 made without adequate consideration and for the primary purpose of defeating
15 a surviving spouse in a claim to a share of the decedent's property so
16 transferred, shall be void and inoperative to bar the claim. The decedent shall
17 be deemed at the time of his or her death to be the owner and seised of an
18 interest in such property sufficient for the purpose of assigning and setting out
19 the surviving spouse's share.

20 § 322. UNLAWFUL KILLING AFFECTING INHERITANCE

21 Notwithstanding sections 311 through 314 of this title or provisions

1 otherwise made, in any case where an individual is entitled to inherit or receive
2 property under the last will of a decedent, or otherwise, such individual's share
3 in the decedent's estate shall be forfeited and shall pass to the remaining heirs
4 or beneficiaries of the decedent if such person intentionally and unlawfully
5 kills the decedent. In any proceedings to contest the right of an individual to
6 inherit or receive property under a will, the record of such person's conviction
7 of intentionally and unlawfully killing the decedent shall be admissible
8 evidence that such person did intentionally kill the decedent.

9 Subchapter 3. Descent, Omitted Issue, and Lapsed Legacies

10 § 331. DEGREES; HOW COMPUTED: KINDRED OF HALF-BLOOD

11 Kindred of the half-blood shall inherit the same share they would inherit if
12 they were of the whole blood.

13 § 332. SHARE OF AFTERBORN CHILD

14 When a child of a testator is born after the making of a will and provision is
15 not therein made for that child, he or she shall have the same share in the estate
16 of the testator as if the testator had died intestate unless it is apparent from the
17 will that it was the intention of the testator that provision should not be made
18 for the child.

19 § 333. SHARE OF CHILD OR DESCENDANT OF CHILD OMITTED

20 FROM WILL

21 When a testator omits to provide in his or her will for any of his or her

1 children, or for the descendants of a deceased child, and it appears that the
2 omission was made by mistake or accident, the child or descendants, as the
3 case may be, shall have and be assigned the same share of the estate of the
4 testator as if the testator had died intestate.

5 § 334. AFTERBORN AND OMITTED CHILD; FROM WHAT PART
6 OF ESTATE SHARE TAKEN

7 When a share of a testator's estate is assigned to a child born after the
8 making of a will, or to a child or the descendant of a child omitted in the will,
9 the share shall be taken first from the estate not disposed of by the will, if there
10 is any. If that is not sufficient, so much as is necessary shall be taken from the
11 devisees or legatees in proportion to the value of the estate they respectively
12 receive under the will. If the obvious intention of the testator, as to some
13 specific devise, legacy, or other provision in the will, would thereby be
14 defeated, the specific devise, legacy, or provision may be exempted from such
15 apportionment and a different apportionment adopted in the discretion of the
16 court.

17 § 335. BENEFICIARY DYING BEFORE TESTATOR: DESCENDANTS
18 TO TAKE

19 When a testamentary gift is made to a child or other kindred of the testator,
20 and the designated beneficiary dies before the testator, leaving one or more
21 descendants who survive the testator, such descendants shall take the gift that

1 the designated beneficiary would have taken if he or she had survived the
2 testator, unless a different disposition is required by the will.

3 § 336. INDIVIDUAL ABSENT AND UNHEARD OF; SHARE OF ESTATE

4 If an individual entitled to a distributive share of the estate of a decedent is
5 absent and unheard of for six years, two of which are after the death of the
6 decedent, the probate court in which the decedent's estate is pending may order
7 the share of the absent individual distributed in accordance with the terms of
8 the decedent's will or the laws of intestacy as if such absent individual had not
9 survived the decedent. If the absent individual proves to be alive, he or she
10 shall be entitled to the share of the estate notwithstanding prior distribution,
11 and may recover in an action on this statute any portion thereof which any
12 other individual received under order. Before an order is made for the
13 payment of distribution of any money or estate as authorized in this section,
14 notice shall be given as provided by the Vermont Rules of Probate Procedure.

15 § 337. REQUIREMENT THAT INDIVIDUAL SURVIVE DECEDENT FOR
16 120 HOURS

17 Except as provided in the decedent's will, an individual who fails to survive
18 the decedent by 120 hours is deemed to have predeceased the decedent for
19 purposes of homestead allowance, exempt property, intestate succession, and
20 taking under decedent's will, and the decedent's heirs and beneficiaries shall
21 be determined accordingly. If it is not established by clear and convincing

1 evidence that an individual who would otherwise be an heir or beneficiary
2 survived the decedent by 120 hours, it is deemed that the individual failed to
3 survive for the required period. This section is not to be applied if its
4 application would result in escheat.

5 § 338. DISTRIBUTION; ORDER IN WHICH ASSETS APPROPRIATED;

6 ABATEMENT

7 (a)(1) Except as provided in subsection (b) of this section, shares of
8 distributes given under a will abate, without any preference or priority as
9 between real and personal property, in the following order:

10 (A) property not disposed of by the will;

11 (B) residuary devises and bequests;

12 (C) general devises and bequests;

13 (D) specific devises and bequests.

14 (2) For purpose of abatement, a general devise or bequest charged on
15 any specific property or fund is a specific devise or bequest to the extent of the
16 value of the property on which it is charged, and upon the failure or
17 insufficiency of the property on which it is charged, a general devise or
18 bequest to the extent of the failure or insufficiency. Abatement within each
19 classification is in proportion to the amounts of property each of the
20 beneficiaries would have received if full distribution of the property had been
21 made in accordance with the terms of the will.

1 (b) If the will expresses an order of abatement or if the testamentary plan or
2 the express or implied purpose of a devise or bequest would be defeated by the
3 order of abatement listed in subsection (a) of this section, the shares of the
4 distributees shall abate as may be necessary to give effect to the intention of
5 the testator.

6 (c) If the subject of a preferred devise or bequest is sold or used incident to
7 administration, abatement shall be achieved by appropriate adjustments in, or
8 contribution from, other interests in the remaining assets.

9 Sec. 3. 23 V.S.A. § 2023 is amended to read:

10 § 2023. TRANSFER OF INTEREST IN VEHICLE

11 (a) If an owner transfers his or her interest in a vehicle, other than by the
12 creation of a security interest, he or she shall, at the time of delivery of the
13 vehicle, execute an assignment and warranty of title to the transferee in the
14 space provided therefor on the certificate or as the commissioner prescribes,
15 and of the odometer reading or hubometer reading or clock meter reading of
16 the vehicle at the time of delivery in the space provided therefor on the
17 certificate, and cause the certificate and assignment to be mailed or delivered
18 to the transferee or to the commissioner. Where title to a vehicle is in the name
19 of more than one person, the nature of the ownership must be indicated by one
20 of the following on the certificate of title:

21 (1) TEN ENT (tenants by the entirety);

- 1 (2) JTEN (joint tenants);
2 (3) TEN COM (tenants in common); ~~or~~
3 (4) PTNRS (partners); or
4 (5) TOD (transfer on death).

5 (b) Upon request of the owner or transferee, a lienholder in possession of
6 the certificate of title shall, unless the transfer was a breach of his or her
7 security agreement, either deliver the certificate to the transferee for delivery to
8 the commissioner or, upon receipt from the transferee of the owner's
9 assignment, the transferee's application for a new certificate and the required
10 fee, mail or deliver them to the commissioner. The delivery of the certificate
11 does not affect the rights of the lienholder under his security agreement.

12 (c) If a security interest is reserved or created at the time of the transfer, the
13 certificate of title shall be retained by or delivered to the person who becomes
14 the lienholder, and the parties shall comply with the provisions of section 2043
15 of this title.

16 (d) Except as provided in section 2024 of this title and as between the
17 parties, a transfer by an owner is not effective until the provisions of this
18 section and section 2026 of this title have been complied with; however, an
19 owner who has delivered possession of the vehicle to the transferee and has
20 complied with the provisions of this section and section 2026 of this title

1 requiring action by him or her is not liable as owner for any damages thereafter
2 resulting from operation of the vehicle.

3 (e) Notwithstanding other provisions of the law, whenever the estate of an
4 individual who dies intestate consists principally of an automobile, the
5 surviving spouse shall be deemed to be the owner of the motor vehicle and title
6 to the same shall automatically and by virtue hereof pass to said surviving
7 spouse. Registration of the vehicle in the name of the surviving spouse shall
8 be effected by payment of a transfer fee of \$7.00. This transaction is exempt
9 from the provisions of the purchase and use tax on motor vehicles.

10 (1) Notwithstanding other provisions of the law, and except as provided
11 in subdivision (2) of this subsection, whenever the estate of an individual
12 consists in whole or in part of a motor vehicle, and the person's will or other
13 testamentary document does not specifically address disposition of motor
14 vehicles, the surviving spouse shall be deemed to be the owner of the motor
15 vehicle and title to the motor vehicle shall automatically pass to the surviving
16 spouse. Registration and title of the motor vehicle in the name of the surviving
17 spouse shall be effected by payment of a transfer fee of \$7.00. This transaction
18 is exempt from the provisions of the purchase and use tax on motor vehicles.

19 (2) This subsection shall apply to no more than two motor vehicles, and
20 shall not apply if the motor vehicle is titled in the name of one or more persons
21 other than the decedent and the surviving spouse.

Sec. 4. 23 V.S.A. § 3816 is amended to read:

* * *

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1 Sec. 5. 27 V.S.A. §§ 101 and 102 are amended to read:

2 § 101. DEFINITION; EXEMPTION FROM ATTACHMENT AND
3 EXECUTION

4 The homestead of a natural person consisting of a dwelling house,
5 outbuildings and the land used in connection therewith, not exceeding
6 ~~\$75,000.00~~ \$125,000.00 in value, and owned and used or kept by such person
7 as a homestead together with the rents, issues, profits, and products thereof,
8 shall be exempt from attachment and execution except as hereinafter provided.

9 § 102. DESIGNATING HOMESTEAD IN CASE OF LEVY

10 When an execution is levied upon real estate of the person of which a
11 homestead is a part or upon that part of a homestead in excess of the limitation
12 of ~~\$75,000.00~~ \$125,000.00 in value, that person may designate and choose the
13 part thereof, not exceeding the limited value, to which the exemption created in
14 section 101 of this title shall apply. Upon designation and choice or refusal to
15 designate or choose, the officer levying the execution, if the parties fail to
16 agree upon appraisers, shall appoint three disinterested freeholders of the
17 vicinity who shall be sworn by him or her and who shall fix the location and
18 boundaries of the homestead to the amount of ~~\$75,000.00~~ \$125,000.00 in
19 value. The officer shall then proceed with the sale of the residue of the real
20 estate on the execution as in other cases, and the doings in respect to the
21 homestead shall be stated in the return upon the execution.