



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB3671

Introduced 2/24/2009, by Rep. William B. Black

SYNOPSIS AS INTRODUCED:

755 ILCS 5/2-8

from Ch. 110 1/2, par. 2-8

Amends the Probate Act of 1975. Provides that a will may be renounced by the testator's surviving spouse, but only if the will contains a provision for the benefit of the surviving spouse. Provides that if a will is renounced by the testator's surviving spouse (instead of if a will is renounced by the testator's surviving spouse whether or not the will contains any provision for the benefit of the surviving spouse), the surviving spouse is entitled to the following share of the testator's estate after payment of all just claims: 1/3 of the entire estate if the testator leaves a descendant or 1/2 of the entire estate if the testator leaves no descendant.

LRB096 09878 AJO 20041 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing
5 Section 2-8 as follows:

6 (755 ILCS 5/2-8) (from Ch. 110 1/2, par. 2-8)

7 Sec. 2-8. Renunciation of will by spouse.)

8 (a) A will may be renounced by the testator's surviving
9 spouse, but only if the will contains a provision for the
10 benefit of the surviving spouse. If a will is renounced by the
11 testator's surviving spouse, ~~whether or not the will contains~~
12 ~~any provision for the benefit of the surviving spouse,~~ the
13 surviving spouse is entitled to the following share of the
14 testator's estate after payment of all just claims: 1/3 of the
15 entire estate if the testator leaves a descendant or 1/2 of the
16 entire estate if the testator leaves no descendant.

17 (b) In order to renounce a will, the testator's surviving
18 spouse must file in the court in which the will was admitted to
19 probate a written instrument signed by the surviving spouse and
20 declaring the renunciation. The time of filing the instrument
21 is: (1) within 7 months after the admission of the will to
22 probate or (2) within such further time as may be allowed by
23 the court if, within 7 months after the admission of the will

1 to probate or before the expiration of any extended period, the
2 surviving spouse files a petition therefor setting forth that
3 litigation is pending that affects the share of the surviving
4 spouse in the estate. The filing of the instrument is a
5 complete bar to any claim of the surviving spouse under the
6 will.

7 (c) If a will is renounced in the manner provided by this
8 Section, any future interest which is to take effect in
9 possession or enjoyment at or after the termination of an
10 estate or other interest given by the will to the surviving
11 spouse takes effect as though the surviving spouse had
12 predeceased the testator, unless the will expressly provides
13 that in case of renunciation the future interest shall not be
14 accelerated.

15 (d) If a surviving spouse of the testator renounces the
16 will and the legacies to other persons are thereby diminished
17 or increased in value, the court, upon settlement of the
18 estate, shall abate from or add to the legacies in such a
19 manner as to apportion the loss or advantage among the legatees
20 in proportion to the amount and value of their legacies.

21 (Source: P.A. 79-328.)