

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

HOUSE BILL 2036

4
5 By: Representative Vines

For An Act To Be Entitled

8 AN ACT TO ALLOW A PERSON THE ABILITY TO PROVIDE A
9 STATEMENT IN HIS OR HER WILL REGARDING PRETERMITTED
10 HEIRS; AND FOR OTHER PURPOSES.

Subtitle

14 TO ALLOW A PERSON THE ABILITY TO PROVIDE
15 A STATEMENT IN HIS OR HER WILL REGARDING
16 PRETERMITTED HEIRS.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code § 28-39-407 is amended to read as follows:

22 28-39-407. Rights of children or issue – Limitations.

23 (a)(1) Subsequently Born or Adopted Children. ~~Whenever~~ When a child
24 ~~shall have~~ has been born to or adopted by a testator after the testator has
25 made his or her will, and the testator ~~shall die~~ dies leaving the after-born
26 or adopted child not mentioned or provided for in his or her will either
27 specifically or as a member of a class, the testator ~~shall be~~ is deemed to
28 have died intestate with respect to the child.

29 (2) The child ~~shall be~~ is entitled to recover from the devisees
30 in proportion to the amounts of their respective shares, that portion of the
31 estate ~~which~~ that he or she would have inherited had there been no will.

32 (b)(1)(A) Pretermitted Children. If, at the time of the execution of
33 a will, there is a living child of the testator, or living child or issue of
34 a deceased child of the testator, whom the testator ~~shall omit~~ omits to
35 mention or provide for, either specifically or as a member of a class, the
36 testator ~~shall be~~ is deemed to have died intestate with respect to the child



1 or issue.

2 (B)(i) The child or issue shall be entitled to recover
 3 from the devisees in proportion to the amounts of their respective shares,
 4 that portion of the estate ~~which~~ that he or she or they would have inherited
 5 had there been no will, unless the testator includes in his or her will a
 6 statement that:

7 (a) He or she has no knowledge of any
 8 pretermitted heirs; and

9 (b) If one (1) or more persons come forward to
 10 recover under the will after the testator has deceased, the pretermitted heir
 11 is entitled to recover only a minimal share.

12 (ii) For the purposes of subdivision (b)(1)(B)(i)(b)
 13 of this section, the determination of what is "minimal" shall be made by the
 14 court that is probating the will.

15 (2) Should a testator include a statement as provided in
 16 subdivision (b)(1)(B)(i) of this section and if the court probating the will
 17 determines that a lawful pretermitted heir has come forward to claim under
 18 the will, any specified devise under subdivision (b)(1)(B) of this section
 19 negates any other claim the pretermitted heir might be entitled to under this
 20 section.

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