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

# A Bill

HOUSE BILL 2036

5  
6 By: Representative Vines

7 Filed with: Interim House Committee on Judiciary  
8 pursuant to A.C.A. §10-3-217.

## For An Act To Be Entitled

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

## Subtitle

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15 TO ALLOW A PERSON THE ABILITY TO PROVIDE  
16 A STATEMENT IN HIS OR HER WILL REGARDING  
17 PRETERMITTED HEIRS.  
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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23 SECTION 1. Arkansas Code § 28-39-407 is amended to read as follows:  
24 28-39-407. Rights of children or issue – Limitations.

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

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

34 (b)(1)(A) Pretermitted Children. If, at the time of the execution of  
35 a will, there is a living child of the testator, or living child or issue of  
36 a deceased child of the testator, whom the testator ~~shall omit~~ omits to

1 mention or provide for, either specifically or as a member of a class, the  
2 testator ~~shall be~~ is deemed to have died intestate with respect to the child  
3 or issue.

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

9 (a) He or she has no knowledge of any  
10 pretermitted heirs; and

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

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

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

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24 Referred by the Arkansas House of Representatives

25 Prepared by: BPG/VJF  
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