

3 "In all actions brought in the courts of this state to recover damages
 4 of a defendant in which contributory negligence of the plaintiff, actual
 5 or imputed, was heretofore a complete defense or bar to recovery, the
 6 plaintiff shall not hereafter, have the burden of pleading and proving
 7 his freedom from contributory negligence, and if the defendant relies
 8 upon negligence of the plaintiff as a complete defense or bar to plain-
 9 tiff's recovery, the defendant shall have the burden of pleading and
 10 proving negligence of the plaintiff, if any, and that it was a proximate
 11 cause of the injury or damage. As used in this section, the term 'plain-
 12 tiff' shall include a defendant filing a counterclaim or cross-petition,
 13 and the term 'defendant' shall include a plaintiff against whom a coun-
 14 terclaim or cross-petition has been filed."

Approved April 19, 1965.

CHAPTER 431

EXAMINATION AND CROSS-EXAMINATION OF WITNESSES

H. F. 236

AN ACT to amend section six hundred twenty-four point one (624.1), Code 1962, relating to the examination and cross-examination of witnesses.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Section six hundred twenty-four point one (624.1),
 2 Code 1962, is hereby amended by adding thereto the following:
 3 "1. A party may interrogate any unwilling or hostile witness by
 4 leading questions. A party may call an adverse party or an officer,
 5 director, or managing agent of a public or private corporation or of a
 6 partnership or association which is an adverse party, and interrogate
 7 him by leading questions and contradict and impeach him in all re-
 8 spects as if he had been called by the adverse party, and the witness
 9 thus called may be contradicted and impeached by or on behalf of the
 10 adverse party also, and may be cross-examined by the adverse party
 11 only upon the subject matter of his examination in chief."

Approved April 14, 1965.

CHAPTER 432

AMENDMENTS TO PROBATE CODE

S. F. 49

AN ACT relating to various amendments to the Probate Code and old age assistance and medical assistance for the aged.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Section three (3) of chapter three hundred twenty-six
 2 (326), Acts 60th General Assembly is amended by striking from lines

3 forty-six (46) and forty-seven (47) the words "to whom letters have
4 been issued".

1 SEC. 2. Section twenty-one (21) of chapter three hundred twenty-
2 six (326), Acts 60th General Assembly is amended by adding in line
3 four (4) before the word "other" the words "inheritance tax apprais-
4 ers,".

1 SEC. 3. Section twenty-eight (28) of chapter three hundred twen-
2 ty-six (326), Acts 60th General Assembly is amended by adding at the
3 end thereof the following:

4 "When the clerk docket a trust proceedings under this section, he
5 shall place and keep in such file a true copy of the will creating such
6 trust."

1 SEC. 4. Section thirty-two (32) of chapter three hundred twenty-
2 six (326), Acts 60th General Assembly is amended by numbering the
3 paragraphs as subsections one (1) and two (2) and adding a new sub-
4 section as follows:

5 "3. The reports required by this section thirty-two (32) shall indi-
6 cate thereon all cases in which the attorney, or the fiduciary or his
7 surety, is deceased, or insolvent, or cannot be found, or has removed
8 from this state, and where it is shown by said reports, or it otherwise
9 appears that there are no known assets belonging to the estate, the
10 judge may, on his own motion, order said estate closed, and may, in
11 his discretion, waive costs, or, on reasonable notice to the fiduciary,
12 tax costs against the fiduciary. Such order shall not operate to prevent
13 the reopening of such estate."

1 SEC. 5. Section thirty-eight (38) of chapter three hundred twenty-
2 six (326), Acts 60th General Assembly is amended by striking from
3 line one (1) the word "The" and inserting in lieu thereof the words
4 "Except as otherwise provided in this Code, the".

1 SEC. 6. Section forty (40) of chapter three hundred twenty-six
2 (326), Acts 60th General Assembly is hereby repealed and the follow-
3 ing enacted in lieu thereof:

4 "Sec. 40. **Notice in probate proceedings.**

5 "1. *Court prescribing notice.* Except as otherwise provided in this
6 Code, the court shall fix the time and place of hearing of any matter
7 requiring notice and shall prescribe the time and manner of service
8 of the notice of such hearing.

9 "2. *Notice by publication.* In the case of proceedings against un-
10 known persons or persons whose address or whereabouts are unknown,
11 the court shall prescribe that notice may be served by publication
12 within the time and in the manner provided by the Rules of Civil
13 Procedure.

14 "3. *No notice by posting.* No notice shall be served at any time by
15 posting."

1 SEC. 7. Section sixty-four (64) of chapter three hundred twenty-
2 six (326), Acts 60th General Assembly is hereby repealed and the fol-
3 lowing sections are enacted in lieu thereof:

4 "Sec. 63. **Qualification of fiduciary.** Any natural person of full
5 age, and any corporation authorized to do business in this state and

6 to act in a fiduciary capacity, is qualified to serve as a fiduciary in this
7 state except the following:

8 "1. One who is a mental retardate, mentally ill, a chronic alcoholic,
9 or a spendthrift.

10 "2. Any other person whom the court determines to be unsuitable.

11 "Sec. 64. **Nonresident fiduciaries.** A nonresident of this state
12 who is qualified under the provisions of section sixty-three (63) may,
13 upon application, be appointed fiduciary, provided a resident fiduciary
14 is appointed to serve with such nonresident fiduciary; and provided
15 further that the court, for good cause shown, may appoint such non-
16 resident fiduciary to serve alone without the appointment of a resident
17 fiduciary."

1 SEC. 8. Division three (III) of chapter three hundred twenty-six
2 (326), Acts 60th General Assembly is amended by adding at the be-
3 ginning of Part three (3) a new section as follows:

4 "Sec. 93. **Limitation on actions affecting deeds.** No action for
5 recovery of any real estate sold by any fiduciary can be maintained by
6 any person claiming under the deceased, the ward, or a beneficiary,
7 unless brought within five years after the date of the recording of the
8 conveyance."

1 SEC. 9. Section one hundred twenty-three (123) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
3 pealed and the following enacted in lieu thereof:

4 "Sec. 123. **Model prudent man investment Act.**

5 "1. *Investments by fiduciaries.* In acquiring, investing, reinvest-
6 ing, exchanging, retaining, selling and managing property for the
7 benefit of another, a fiduciary shall exercise the judgment and care
8 under the circumstances then prevailing, which men of prudence,
9 discretion and intelligence exercise in the management of their own
10 affairs, not for the purpose of speculation, but with regard to the
11 permanent disposition of their funds, considering the probable income,
12 as well as the probable safety, of their capital. Within the limitations
13 of the foregoing standards, a fiduciary is authorized to acquire and
14 retain every kind of property and every kind of investment, specific-
15 ally including, but not by way of limitation, bonds, debentures, and
16 other corporate obligations, and stocks and shares, preferred or com-
17 mon, which men of prudence, discretion and intelligence acquire or
18 retain for their own account.

19 "2. *Limitations.* Nothing contained in this Code shall be construed
20 as authorizing any departure by a fiduciary from, or his variation of,
21 the express terms or limitations set forth in any will, agreement, court
22 order, or other instrument creating or defining the fiduciary's duties
23 and powers, but the terms 'legal investment' or 'authorized invest-
24 ment', or words of similar import, as used in any such instrument,
25 shall be taken to mean any investment that is permitted by the provi-
26 sions of subsection one (1) hereof.

27 "3. *Powers of court to authorize investment.* Nothing contained in
28 this section one hundred twenty-three (123) shall be construed as
29 restricting the power of the court, after such notice as the court may
30 prescribe, to permit a fiduciary to deviate from the terms of any will,
31 agreement, or other instrument relating to the acquisition, investment,

32 reinvestment, exchange, retention, sale or management of fiduciary
33 property.

34 "4. *Scope of application.* The provisions of this section one hun-
35 dred twenty-three (123) shall govern all fiduciaries acting under the
36 jurisdiction of the court whether the wills, agreements or other instru-
37 ments under which they are acting now exist, or are hereafter made."

1 SEC. 10. Section one hundred twenty-four (124) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from line two (2) the words "If court approval is first ob-
4 tained,".

1 SEC. 11. Section one hundred fifty-five (155) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is amended by
3 adding at the end thereof the following:

4 "Every application of a fiduciary seeking an order under the provi-
5 sions of this section shall specify in detail the reasons for such appli-
6 cation and the facts justifying the requested order. The notice shall
7 have a copy of the application attached, or, if published, it shall con-
8 tain a detailed statement of the reasons and facts justifying the re-
9 quested order."

1 SEC. 12. Section one hundred seventy (170) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is amended by
3 numbering as subsection one (1) and adding as subsection two (2)
4 the following:

5 "2. *Bonds fixed by clerk.* Unless a bond is waived by will under the
6 authority of section one hundred seventy-two (172), or by other in-
7 strument creating the estate, or in accordance with section one hun-
8 dred seventy-three (173), or by prior order of court, the clerk shall fix
9 the bond in the amount provided by subsection one (1) of this section
10 one hundred seventy (170). The clerk shall not thereafter increase or
11 decrease a bond."

1 SEC. 13. Section two hundred twenty (220) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from lines one (1) and two (2) the words "Descendants and
4 other".

1 SEC. 14. Section two hundred twenty-nine (229) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking lines ten (10) and eleven (11) and inserting in lieu thereof
4 the following:

5 "4. The estimated value of the personal property of the estate plus
6 the estimated gross annual income of the estate during the period of
7 administration."

1 SEC. 15. Section two hundred thirty (230) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is amended by
3 striking lines seven (7) to eleven (11), inclusive, and inserting in lieu
4 thereof the following:

5 "Notice of appointment of administrator and notice to creditors
 6 In the District Court of Iowa
 7 in and for County.
 8 In the Estate of Probate No.

9 To All Persons Interested in the Estate of
 10 deceased:
 11 deceased:

11 You are hereby notified that on the day of,
 12 19....., the undersigned was appointed administrator of said estate.
 13 Notice is hereby given that all persons indebted to said estate are".

1 SEC. 16. Section two hundred thirty-seven (237) of chapter three
 2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
 3 pealed and the following enacted in lieu thereof:

4 "Sec. 237. **Presumption that surviving spouse elects to take under**
 5 **will.** Where a voluntary election to take or refuse to take under a
 6 will has not been filed by a surviving spouse within two (2) months
 7 of the date of the second publication of notice of admission of the will
 8 to probate, and the surviving spouse is not the executor of such will, it
 9 shall be the duty of the executor to cause to be served a written notice
 10 upon the surviving spouse in the manner directed by the court, advis-
 11 ing the surviving spouse that the will of such decedent has been ad-
 12 mitted to probate, stating the name of the court where the will was
 13 admitted and the date when the will was admitted to probate, and
 14 notifying such spouse that unless within four (4) months after serv-
 15 ice of such notice, he files an election in writing with the clerk of such
 16 court refusing to take under the provisions of such will, such surviv-
 17 ing spouse shall take under the provisions of the will; provided that
 18 if the surviving spouse files his election to take under the will at any
 19 time the requirements of this section for serving notice are thereby
 20 waived; provided, further, that if within the before described period
 21 of four (4) months an affidavit is filed setting forth that such sur-
 22 viving spouse is incapable to make such election, the court shall deter-
 23 mine whether there shall be an election to take against the will in
 24 accordance with section two hundred thirty-eight (238); provided
 25 further, that the court on application may, prior to the expiration of
 26 such period of four (4) months, for cause shown, enter an order ex-
 27 tending the time for making such election. If such surviving spouse
 28 shall be an executor of the will and fails, within six (6) months after
 29 the date of the second publication of notice of admission of the will to
 30 probate, to file with the clerk of the court an election to refuse to take
 31 under the provisions of the will of the deceased, it shall be conclusively
 32 presumed that such survivor consents to the provisions of the will
 33 and elects to take thereunder; provided, further, that the court on
 34 application may, prior to the expiration of such period of six (6)
 35 months, on cause shown, enter an order extending the time for making
 36 such election."

1 SEC. 17. Substitute for the head notes of section two hundred
 2 ninety-one (291) of chapter three hundred twenty-six (326), Acts
 3 60th General Assembly the words "Contents of petition for probate
 4 of will."

1 SEC. 18. Substitute for the head notes of section two hundred
2 ninety-two (292) of chapter three hundred twenty-six (326), Acts
3 60th General Assembly the words "**Contents of petition for appoint-**
4 **ment of executor.**"

5 Section two hundred ninety-two (292) of chapter three hundred
6 twenty-six (326), Acts 60th General Assembly is amended by striking
7 lines eight (8) and nine (9) and inserting in lieu thereof the follow-
8 ing:
9 "of the personal property of the estate plus the estimated gross
10 annual income of the estate during the period of administration."

1 SEC. 19. Section two hundred ninety-three (293) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
3 pealed and the following enacted in lieu thereof:

4 "Sec. 293. **Hearing upon petition.** Upon the filing of a petition
5 for probate of a will, the court or the clerk may, in its or his discre-
6 tion, hear it forthwith, or at such time and place as the court or clerk
7 may direct, with or without requiring notice, and upon proof of due
8 execution of the will, admit the same to probate."

1 SEC. 20. Section two hundred ninety-five (295) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
3 pealed and sections two hundred ninety-six (296) to three hundred
4 two (302), inclusive, are renumbered as two hundred ninety-five
5 (295) to three hundred one (301), inclusive.

1 SEC. 21. Chapter three hundred twenty-six (326), Acts 60th Gen-
2 eral Assembly is amended by adding as sections three hundred two
3 (302) and three hundred three (303) the following:

4 "Sec. 302. **Clerk filing copies of will.** When the clerk places an
5 original will in a separate file as provided in section three hundred one
6 (301), he shall place and keep a true copy of such will in the probate
7 file containing the proceedings in the estate which it governs."

8 "Sec. 303. **Charitable trusts—copy of wills to attorney general.**
9 When a will creating a charitable trust has been admitted to probate,
10 or when any instrument establishing a charitable trust has been filed
11 with the clerk, the clerk shall forthwith mail a copy of such will or
12 instrument to the attorney general. At any time, the attorney general
13 may investigate for the purpose of determining and ascertaining
14 whether or not such estate or trust is being administered in accord-
15 ance with law and within the terms and purposes thereof, and may,
16 at any time, make application to the court for such orders therein as
17 may appear to be reasonable and proper to carry out the purposes of
18 the trust. The words 'charitable trust' as used in this section shall
19 mean any fiduciary relationship with respect to property arising as a
20 result of manifestation of an intention to create it and subjecting the
21 person by whom the property is held to equitable duties to deal with
22 the property for charitable, educational or religious purposes."

1 SEC. 22. Section three hundred three (303) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is hereby repealed
3 and the following enacted as section three hundred four (304) in lieu
4 thereof:

5 "Sec. 304. **Notice of probate of will with administration.** On

6 admission of a will to probate, the executor shall, as soon as letters are
 7 issued, cause to be published once each week for two consecutive weeks
 8 in a daily or weekly newspaper of general circulation published in the
 9 county in which the estate is pending, a notice of admission of the will
 10 to probate and of the appointment of the executor, in which shall be
 11 included a notice that any action to set aside the probate of said will
 12 must be brought within one year from the date of the second publica-
 13 tion of said notice or thereafter be forever barred, and there shall also
 14 be included therein a notice to debtors to make payment, and to cred-
 15 itors having claims against said estate to file them with the clerk
 16 within six months from the second publication of said notice, or there-
 17 after be forever barred.

18 Such notice shall be substantially in the following form:

19 Notice of Probate of Will, of Appointment of Executor, and Notice
 20 to Creditors

21 In the District Court of Iowa

22 in and for County Probate No.

23 In the Estate of, Deceased

24 To All Persons Interested in the Estate

25 of Deceased:

26 You are hereby notified that on the day of,
 27 19....., the last will and testament of, deceased,
 28 bearing date of the day of, 19....., was ad-
 29 mitted to probate in the above named court and that
 30 was appointed executor of said estate. Any action to set aside said will
 31 must be brought in the district court of said county within one year
 32 from the date of the second publication of this notice, or thereafter be
 33 forever barred.

34 Notice is further given that all persons indebted to said estate are
 35 requested to make immediate payment to the undersigned, and cred-
 36 itors having claims against said estate shall file them with the clerk of
 37 the above named district court, as provided by law, duly authenticated,
 38 for allowance; and unless so filed within six months from the second
 39 publication of this notice (unless otherwise allowed or paid) such
 40 claim shall thereafter be forever barred.

41 Dated this day of, 19.....

42
 43 Executor of said estate

44
 45 Address

46
 47 Attorney for said executor

48
 49 Address

50 Date of second publication
 51 day of, 19.....

52 (date to be inserted by publisher)"

1 SEC. 23. Section three hundred four (304) of chapter three hun-
 2 dred twenty-six (326), Acts 60th General Assembly is hereby repealed
 3 and the following enacted as section three hundred five (305) in lieu
 4 thereof:

5 "Sec. 305. Notice where no administration. On admission of a
 6 will to probate without administration of the estate, and upon ad-

7 vanced payment of the costs thereof by the proponent, the clerk shall
 8 cause to be published, in the manner prescribed in the preceding sec-
 9 tion, a notice of the admission of the will to probate in which shall be
 10 included a notice that any action to set aside said will must be brought
 11 within one year from the date of the second publication of said notice
 12 or thereafter be barred.

13 Such notice shall be substantially in the following form:

14 Notice of Proof of Will Without Administration

15 In the District Court of Iowa

16 in and for County. Probate No.

17 In the Estate of, Deceased

18 To All Persons Interested in the Estate of

19, Deceased:

20 You are hereby notified that on the day of,
 21 19....., the last will and testament of, deceased,
 22 bearing date of the day of, 19....., was ad-
 23 mitted to probate in the above named court and there will be no pres-
 24 ent administration of the estate. Any action to set aside said will must
 25 be brought in the district court of said county within one year from the
 26 date of the second publication of this notice or thereafter be forever
 27 barred.

28 Dated this day of, 19.....

29

.....
 Clerk of the district court

30

.....
 Attorney for said estate

31

.....
 Address

32 Date of second publication

33 day of, 19.....

(date to be inserted by publisher)"

1 SEC. 24. Sections three hundred five (305) to three hundred nine-
 2 teen (319), inclusive of chapter three hundred twenty-six (326), Acts
 3 60th General Assembly are renumbered as sections three hundred six
 4 (306) to three hundred twenty (320), inclusive.

1 SEC. 25. Section three hundred thirty-six (336) of chapter three
 2 hundred twenty-six (326), Acts 60th General Assembly is amended by
 3 adding in line five (5) after the word "estate" the following:

4 " , except debts and charges of the first, second, third and fifth
 5 classes".

1 SEC. 26. Chapter three hundred twenty-six (326), Acts 60th Gen-
 2 eral Assembly is amended by adding a new section before section three
 3 hundred forty-nine (349) as follows:

4 "Sec. 348. **Right to retain existing property.** Notwithstanding
 5 the provisions of section one hundred twenty-three (123), any per-
 6 sonal representative may continue to hold any investment or property
 7 originally received by him and also any increase thereof."

1 SEC. 27. Section three hundred fifty-two (352), of chapter three
 2 hundred twenty-six (326), Acts 60th General Assembly is amended by
 3 striking from line three (3) the words "such property" and inserting
 4 in lieu thereof the words "the property of which he has possession".

1 SEC. 28. Section three hundred sixty-five (365) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 inserting a comma in line two (2) after the word "purposes".

1 SEC. 29. Section three hundred eighty-six (386) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
3 pealed and the following enacted in lieu thereof:

4 "Sec. 386. **Sale, mortgage, pledge, lease or exchange of property—**
5 **purposes.**

6 "1. Any real or personal property belonging to the decedent, except
7 exempt personal property and the homestead, may be sold, mortgaged,
8 pledged, leased or exchanged by the personal representative for any of
9 the following purposes:

10 a. The payment of debts and charges against the estate;

11 b. The distribution of the estate or any part thereof;

12 c. Any other purpose in the best interests of the estate.

13 "2. Exempt personal property under such provisions as the court
14 may direct, if not set off to the surviving spouse, may be sold, mort-
15 gaged, pledged, leased, or exchanged, provided that the surviving
16 spouse consents thereto.

17 "3. The homestead, under such provisions as the court may direct,
18 if not set off to the surviving spouse and if the surviving spouse has
19 not elected to occupy the homestead, may be sold, mortgaged, pledged,
20 leased or exchanged.

21 "4. The proceeds from the sale of any exempt personal property or
22 from the sale of the homestead shall be held by the personal represent-
23 ative subject to the rights of the surviving spouse or issue, unless such
24 surviving spouse or issue has expressly waived his rights to such pro-
25 ceeds."

1 SEC. 30. Section three hundred eighty-seven (387) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is here-
3 by repealed and the following enacted in lieu thereof:

4 "Sec. 387. **Sale of personal property without order of court.** Per-
5 sonal property of a perishable nature and personal property for which
6 there is a regularly established market may be sold by the personal
7 representative without order of court."

1 SEC. 31. Section three hundred eighty-nine (389) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
3 pealed and the following enacted in lieu thereof:

4 "Sec. 389. **Notice and hearing on sale, mortgage, exchange, pledge**
5 **or lease of property.** Upon the filing of the petition, the court shall
6 fix the time and place of hearing of the petition, and prescribe the time
7 and manner of service of the notice of such hearing on all persons
8 interested in such property, provided, however, that as to personal
9 property and as to the lease of real property not specifically devised,
10 for a period of not to exceed one year, the court may, in its discretion,
11 hear the petition without notice. In those instances where notice is
12 required, the notice shall state briefly the nature of the application.
13 At the hearing and upon satisfactory proof, the court may order the
14 sale, mortgage, exchange, pledge or lease of the property described,
15 or any part thereof, at such price and upon such terms and conditions
16 as the court may authorize."

1 SEC. 32. Section three hundred ninety (390) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is hereby repealed
3 and the following enacted in lieu thereof:

4 "Sec. 390. **Sale subject to mortgage.** When a claim is secured by
5 a mortgage on property, the court may, with the consent of the mort-
6 gagee, order the sale of the property subject to the mortgage, and such
7 consent shall release the estate should a deficiency later appear."

1 SEC. 33. Section three hundred ninety-one (391) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
3 pealed and the following enacted in lieu thereof:

4 "Sec. 391. **Quieting adverse claims.** A petition to determine ques-
5 tions of conflicting and controverted title, or to remove clouds from
6 any title or interest of property involved, may be combined with the
7 petition provided in section three hundred eighty-eight (388)."

1 SEC. 34. Section three hundred ninety-four (394) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
3 pealed and the following enacted in lieu thereof:

4 "Sec. 394. **Order to sell, mortgage, pledge, exchange or lease to be
5 refused if bond given.**

6 "1. *Bond to prevent sale.* Any person interested in the estate may
7 prevent a sale, mortgage, pledge, exchange or lease of the whole or any
8 part of the real estate or personal property for any purpose, by giving
9 bond to the satisfaction of the court, conditioned that he will pay such
10 demands against the estate as the court shall require, not to exceed the
11 value of the property thus kept from sale, mortgage, pledge, exchange,
12 or lease, as soon as called upon by the court for that purpose.

13 "2. *Breach of bond—procedure.* If the conditions of such bond are
14 broken, the property will be liable for the debts, unless it has passed
15 into the hands of innocent purchasers, and the executor or adminis-
16 trator may take possession thereof and sell it under the direction of
17 the court, or he may prosecute the bond, or pursue both remedies at
18 the same time, if the court so directs.

19 "3. *Effect of bond.* If the conditions of the bond are complied with,
20 the property shall pass by devise, bequest, distribution, or descent in
21 the same manner as though there had been no debts against the
22 estate."

1 SEC. 35. Section three hundred ninety-nine (399) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
3 pealed and the following enacted in lieu thereof:

4 "Sec. 399. **Report for approval.** After making any such sale,
5 mortgage, exchange or lease of real property, the personal representa-
6 tive shall make a verified report thereof to the court. The court shall
7 examine said report, and if satisfied that the sale, mortgage, exchange,
8 or lease has been at a price and upon terms advantageous to the estate,
9 and, in all respects, made in conformity with law, and that it ought to
10 be confirmed, shall confirm the same and order the personal represent-
11 ative to deliver a deed, mortgage, lease or other proper instruments to
12 the persons entitled thereto; provided, however, that in the event said
13 real property has been sold at private sale without an appraisal for
14 inheritance tax purposes or for purpose of such sale, or, if it has been
15 so appraised and has been sold at private sale for less than the ap-

16 praised value thereof, then, upon the filing of such report, the court
17 may enter an order fixing a time and place for hearing thereon and
18 prescribe a notice of such hearing to be served upon all interested
19 persons, any one of whom, prior to the time fixed for such hearing,
20 may file written objections to the entry of an order approving said
21 sale. If not satisfied that the sale, mortgage, exchange, or lease has
22 been made in conformity with law and that it is to the best interests
23 of the estate, the court may reject the sale, mortgage, exchange, or
24 lease, and enter such orders as the court may deem advisable.”

1 SEC. 36. Section four hundred (400) of chapter three hundred
2 twenty-six (326), Acts 60th General Assembly is hereby repealed and
3 the following enacted in lieu thereof:

4 “Sec. 400. **Joining report with petition.** The report of any pri-
5 vate sale, mortgage, exchange, or lease of real property, as provided
6 in section three hundred ninety-nine (399), may be joined with the
7 petition provided in section three hundred eighty-eight (388) of this
8 Code.”

1 SEC. 37. Sections four hundred one (401), four hundred two
2 (402) and four hundred four (404) of chapter three hundred twenty-
3 six (326), Acts 60th General Assembly are hereby repealed and section
4 four hundred three (403) renumbered as section four hundred one
5 (401).

1 SEC. 38. Section four hundred ten (410) of chapter three hundred
2 twenty-six (326), Acts 60th General Assembly is amended by striking
3 from line two (2) the words “costs of administration” and inserting in
4 lieu thereof the word “charges”.

1 SEC. 39. Section four hundred fifteen (415) of chapter three hun-
2 dred twenty-six (326), Acts of the 60th General Assembly, is amended
3 by striking the first two paragraphs thereof and substituting in lieu
4 thereof the following:

5 “Any action pending against the decedent at the time of his death
6 that survives, shall also be considered a claim filed against the estate
7 if notice of substitution is served upon the personal representative as
8 defendant within the time provided for filing claims in section four
9 hundred ten (410). A copy of the proof of service of notice of such
10 proceedings shall be filed in the probate proceedings but shall not be
11 jurisdictional.

12 A separate action based on a debt or other liability of the decedent
13 may be commenced against a personal representative of the decedent
14 in lieu of filing a claim in the estate. Such an action shall be com-
15 menced by serving an original notice on the personal representative
16 within the time provided for filing claims in section four hundred ten
17 (410) and such action shall also be considered a claim filed against the
18 estate. Such action may be commenced only in a county wherein the
19 venue would have been proper had the decedent survived and the
20 action been commenced against him. A copy of the proof of service of
21 notice shall be filed in the probate proceedings but shall not be juris-
22 dictional.”

- 1 SEC. 40. Section four hundred thirty-nine (439) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from line three (3) the word "shall" and inserting in lieu
4 thereof the word "may".
- 1 SEC. 41. Section four hundred forty-four (444) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from lines six (6) and seven (7) the words "as otherwise
4 provided herein" and inserting in lieu thereof the following:
5 "; provided, however, that a restatement of such claim shall not be
6 barred by the provisions of section four hundred ten (410) of this
7 Code."
- 1 SEC. 42. Section four hundred forty-nine (449) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from line four (4) the words "and, in testate matters, from
4 the residue of the estate,".
- 1 SEC. 43. Change the word "Proceeds" in the head note to section
2 four hundred seventy-two (472) of chapter three hundred twenty-six
3 (326), Acts 60th General Assembly to the word "Property".
- 1 SEC. 44. Section four hundred seventy-eight (478) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is here-
3 by repealed and the following enacted in lieu thereof:
4 "Sec. 478. **Notice of application for discharge.** Unless notice be
5 waived in writing, no personal representative shall be discharged from
6 further duty or responsibility upon final settlement until notice of
7 hearing on his final report or of an application for discharge shall have
8 been served upon all persons interested at such time and in such man-
9 ner as the court may prescribe by an order made before or after the
10 filing of the final report."
- 1 SEC. 45. Change the head note to section four hundred eighty
2 (480) of chapter three hundred twenty-six (326), Acts 60th General
3 Assembly to "**Certificate to county auditor for tax purposes with ad-
4 ministration.**"
- 1 SEC. 46. Change the head note to section four hundred eighty-one
2 (481) of chapter three hundred twenty-six (326), Acts 60th General
3 Assembly to "**Certificate to county auditor for tax purposes without
4 administration.**"
- 1 SEC. 47. Section four hundred eighty-seven (487) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from lines eleven (11) and twelve (12) the words and figures
4 "one hundred ninety (190)" and inserting in lieu thereof the words
5 and figures "one hundred eighty-six (186)".
- 1 SEC. 48. Section four hundred ninety-seven (497) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from lines two (2) and three (3) the words and figures "pro-
4 vided in section three hundred thirty-one (331)" and inserting in lieu
5 thereof the words "from the date of the death of the decedent".

1 SEC. 49. Section four hundred ninety-nine (499) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
3 pealed.

1 SEC. 50. Section five hundred (500) of chapter three hundred
2 twenty-six (326), Acts 60th General Assembly is amended by striking
3 from line one (1) the word "If" and inserting in lieu thereof the words
4 "Notwithstanding any other provision of this Code, if".

1 SEC. 51. Section five hundred two (502) of chapter three hundred
2 twenty-six (326), Acts 60th General Assembly is amended by striking
3 from line one (1) the word "The" and inserting in lieu thereof the
4 words "Notwithstanding any other provision of this Code, the".

1 SEC. 52. Section five hundred twenty-seven (527) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from line two (2) the words and figures "and five hundred
4 twenty-four (524)" and inserting in lieu thereof the following:
5 "five hundred twenty-four (524) and five hundred twenty-six
6 (526)".

1 SEC. 53. Section five hundred sixty-six (566) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking subsection four (4) and inserting in lieu thereof the follow-
4 ing:

5 "4. The estimated present value of the real estate, the estimated
6 value of the personal property, and the estimated gross annual income
7 of the estate. If any money is payable, or to become payable, to the
8 proposed ward by the United States through the Veterans Adminis-
9 tration, the petition shall so state."

1 SEC. 54. Section five hundred eighty (580) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is amended by
3 striking subsection four (4) and inserting in lieu thereof the follow-
4 ing:

5 "4. A general description of the property of the proposed ward
6 within this state and of his right to receive property; also, the esti-
7 mated present value of the real estate, the estimated value of the per-
8 sonal property, and the estimated gross annual income of the estate.
9 If any money is payable, or to become payable, to the proposed ward
10 by the United States through the Veterans Administration, the peti-
11 tion shall so state."

1 SEC. 55. Section six hundred sixteen (616) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from line five (5) the word "ward" and inserting in lieu
4 thereof the word "veteran".

1 SEC. 56. Section six hundred eighteen (618) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from line six (6) the word "twenty-five" and inserting in lieu
4 thereof the word "fifty".

1 SEC. 57. Add as a head note to section six hundred twenty-two
2 (622) of chapter three hundred twenty-six (326), Acts 60th General
3 Assembly the words "**Powers and restrictions**".

4 Said section is amended by striking all of subsection three (3) and
5 renumbering the following subsections.

1 SEC. 58. Section six hundred thirty-five (635) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking all of lines six (6) and seven (7) and inserting in lieu thereof
4 the following:

5 "court shall combine the hearing on such petitions and determine
6 who shall be appointed guardian or conservator, and such petition
7 shall be triable to the court."

1 SEC. 59. Section six hundred forty-five (645) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from line three (3) the word "either".

1 SEC. 60. Section six hundred forty-six (646) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is hereby repealed
3 and the following enacted in lieu thereof:

4 "Sec. 646. **Powers of the conservator without order of court.** The
5 conservator shall have the full power, without prior order of court,
6 with relation to the estate of his ward:

7 "1. To collect, receive, receipt for any principal or income, and to
8 enforce, defend against or prosecute any claim by or against the ward
9 or the conservator; to sue on and defend claims in favor of, or against,
10 the ward or the conservator.

11 "2. To sell and transfer personal property of a perishable nature
12 and personal property for which there is a regularly established mar-
13 ket.

14 "3. To vote at corporate meetings in person or by proxy.

15 "4. To receive additional property from any source.

16 "5. Notwithstanding the provisions of section one hundred twenty-
17 three (123), to continue to hold any investment or other property
18 originally received by him, and also any increase thereof, pending the
19 timely filing of the first annual report."

1 SEC. 61. Section six hundred forty-seven (647) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 inserting after subsection four (4) a new subsection as follows and
4 renumbering the next subsection:

5 "5. To compromise or settle any claim by or against the ward or the
6 conservator; to adjust, arbitrate or compromise claims in favor of or
7 against the ward or the conservator."

1 SEC. 62. Section six hundred forty-eight (648) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from line three (3) the word* and figures "six hundred forty-
4 six (646)" and inserting in lieu thereof the following:

5 "six hundred forty-seven (647)".

1 SEC. 63. Section six hundred seventy-one (671) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking subsection three (3) and inserting in lieu thereof the follow-
4 ing:

*According to enrolled Act.

5 "3. Any changes in investments since the last previous report, in-
6 cluding a list of all assets, and recommendations of the conservator for
7 the retention or disposition of any property held by the conservator."

1 SEC. 64. Section six hundred seventy-seven (677) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby re-
3 pealed and the following enacted in lieu thereof:

4 "Sec. 677. **Accounting to ward—notice of hearing.** Upon the ter-
5 mination of a conservatorship, the conservator shall pay the costs of
6 administration, and render a full and complete accounting to the ward
7 or his personal representative and to the court. Notice of hearing on
8 the final report of a conservator shall be served on the ward or his
9 personal representative, unless such notice is waived, at such time and
10 in such manner as the court may prescribe."

1 SEC. 65. Section six hundred ninety-nine (699) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended by
3 striking subsection two (2) and inserting in lieu thereof the follow-
4 ing:

5 "2. To acquire, manage, invest, reinvest, exchange, retain, grant
6 options on, contract to sell, to sell at public auction or private sale,
7 and, to convey, any or all property, real or personal, at any time, form-
8 ing a part of the trust estate, in such manner and upon such terms and
9 conditions as shall be deemed by such trustee to be for the best inter-
10 ests of the trust."

1 SEC. 66. Section seven hundred (700) of chapter three hundred
2 twenty-six (326), Acts 60th General Assembly is amended by striking
3 subsection three (3) and inserting in lieu thereof the following:

4 "3. Any changes in investments since the last previous report, in-
5 cluding a list of all assets, and recommendations of the trustee for the
6 retention or disposition of any property held by the trustee."

1 SEC. 67. Section seven hundred one (701) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is hereby repealed
3 and the following enacted in lieu thereof:

4 "Sec. 701. **Final report of trustee.** Upon the partial or total ter-
5 mination of a trust, or upon the transfer of the trusteeship due to
6 resignation, removal, dissolution, or other disqualification of the trus-
7 tee of any trust pending in court, the trustee shall make a final report
8 to the court, showing for the period since the filing of the last report
9 the facts required for an intermediate report; provided, however, that
10 unless specifically required by the court to do so, he shall not in any
11 event, be required to report such facts for any period of time as to
12 which he has, under any of the provisions of section seven hundred
13 (700), been expressly relieved from reporting. In any event, the final
14 report of the trustee shall include the following:

15 "1. The name and last known address of each beneficiary.

16 "2. A statement as to those beneficiaries who are known to be
17 minors or under any other legal disability.

18 "3. Distributions made or to be made to each beneficiary at the time
19 of such termination."

1 SEC. 68. Section seven hundred two (702) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is hereby repealed
3 and the following enacted in lieu thereof:

4 "Sec. 702. **Notice of application for discharge.** Unless notice is
5 waived in writing, no final report of a trustee of a trust pending in
6 court shall be approved, and no such trustee shall be discharged from
7 further duty or responsibility upon final settlement, until notice of his
8 application for discharge shall have been served upon all persons inter-
9 ested at such time and in such manner as the court may prescribe by
10 an order made either before or after the filing of the final report of the
11 trustee."

1 SEC. 69. Sections six hundred eighty-two point forty-eight
2 (682.48) to six hundred eighty-two point fifty-nine (682.59), inclu-
3 sive, Code 1962, are hereby repealed.

1 SEC. 70. Section two hundred forty-nine point nineteen (249.19),
2 Code 1962, is amended by striking from line eight (8) the word
3 "second" and inserting in lieu thereof the word "sixth".

1 SEC. 71. Section two hundred forty-nine A point thirteen
2 (249A.13), Code 1962, is hereby amended by striking from line
3 twenty-one (21) the word "second" and inserting in lieu thereof the
4 word "sixth".

1 SEC. 72. Section two hundred forty-nine A point fourteen
2 (249A.14), Code 1962, is hereby amended by striking from line seven
3 (7) the word "second" and inserting in lieu thereof the word "sixth".

1 SEC. 73. Section two hundred forty-nine point nineteen (249.19),
2 Code 1962, is hereby amended by striking from line eight (8) the word
3 "second" and inserting in lieu thereof the word "sixth".

Approved May 7, 1965.

CHAPTER 433

COSTS OF HABEAS CORPUS PROCEEDINGS

H. F. 354

AN ACT to pay out of state funds the costs and fees of habeas corpus proceedings on behalf of plaintiffs confined in state institutions where such proceedings are successful or where the plaintiff is not able to pay.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section six hundred sixty-three point forty-four (663.44), Code
2 1962, is hereby amended by adding thereto the following:

3 "However, where the plaintiff is an inmate of any state institution,
4 and is discharged in habeas corpus proceedings, or where the habeas
5 corpus proceedings fail and costs and fees cannot be collected from
6 the person liable to pay the same, such costs and fees shall be paid by
7 the county in which such state institution is located. The facts of such
8 payment and the proceedings on which it is based, with a statement of