

January 21, 1965.

Senate File 49

Passed on File.

By O'MALLEY, SHAFF, SCHROEDER,

STANLEY and BENEKE.

Passed Senate, Date 1/26, 7/15 Passed House, Date 7/13

Vote: Ayes 49, 47 Nays 0, 0 Vote: Ayes 106 Nays 2

Approved May 7 1965

motion for reconsideration 5/8 - withdrawn 3/16

judiciary: the amendments do not pass 5/10
deferred as unfinished business 7/14

A BILL FOR

An Act relating to various amendments to the probate Code.

Re-Passed House 4/23
95 - C

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

1 Section 1. Section three (3) of chapter three hundred twenty-
2 six (326), Acts 60th General Assembly is amended by striking from
3 lines forty-six (46) and forty-seven (47) the words "to whom let-
4 ters have been issued".

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

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

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

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

5 "3. The reports required by this section thirty-two (32) shall
6 indicate thereon all cases in which the attorney, or the fiduciary

7 or his surety, is deceased, or insolvent, or cannot be found, or
8 has removed from this state, and where it is shown by said reports,
9 or it otherwise appears that there are no known assets belonging
10 to the estate, the judge may, on his own motion, order said estate
11 closed, and may, in his discretion, waive costs, or, on reasonable
12 notice to the fiduciary, tax costs against the fiduciary. Such
13 order shall not operate to prevent the reopening of such estate."

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

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

4 "Sec. 40. Notice in probate proceedings.

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

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

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

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

4 "Sec. 63. Qualification of fiduciary. Any natural person of
5 full age, and any corporation authorized to do busines in this
6 state and to act in a fiduciary capacity, is qualified to serve
7 as a fiduciary in this state except the following :

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

10 "2. Any other person whom the court determines to be unsuit-
11 able.

12 "Sec. 64. Nonresident fiduciaries. A nonresident of this
13 state who is qualified under the provisions of section sixty-three
14 (63) may, upon application, be appointed fiduciary, provided a
15 resident fiduciary is appointed to serve with such nonresident
16 fiduciary ; and provided further that the court, for good cause
17 shown, may appoint such nonresident fiduciary to serve alone with-
18 out the appointment of a resident fiduciary."

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

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

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

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

5 "1. Investments by fiduciaries. In acquiring, investing, re-
6 investing, exchanging, retaining, selling and managing property

7 for the benefit of another, a fiduciary shall exercise the judg-
8 ment and care under the circumstances then prevailing, which men
9 of prudence, discretion and intelligence exercise in the manage-
10 ment of their own affairs, not for the purpose of speculation, but
11 with regard to the permanent disposition of their funds, consider-
12 ing the probable income, as well as the probable safety, of their
13 capital. Within the limitations of the foregoing standards, a
14 fiduciary is authorized to acquire and retain every kind of prop-
15 erty and every kind of investment, specifically including, but
16 not by way of limitation, bonds, debentures, and other corporate
17 obligations, and stocks and shares, preferred or common, which
18 men of prudence, discretion and intelligence acquire or retain
19 for their own account.

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

29 "3. Powers of court to authorize investment. Nothing con-
30 tained in this section one hundred twenty-three (123) shall be
31 construed as restricting the power of the court, after such notice
32 as the court may prescribe, to permit a fiduciary to deviate from
33 the terms of any will, agreement, or other instrument relating
34 to the acquisition, investment, reinvestment, exchange, retention,
35 sale or management of fiduciary property.

36 "4. Scope of application. The provisions of this section
37 one hundred twenty-three (123) shall govern all fiduciaries acting
38 under the jurisdiction of the court whether the wills, agreements
39 or other instruments under which they are acting now exist, or
40 are hereafter made."

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

5 Sec. 11. Section one hundred fifty-five (155) of chapter three
6 hundred twenty-six (326), Acts 60th General Assembly is amended
7 by adding at the end thereof the following:

8 "Every application of a fiduciary seeking an order under the
9 provisions of this section shall specify in detail the reasons
10 for such application and the facts justifying the requested order.
11 The notice shall have a copy of the application attached, or, if
12 published, it shall contain a detailed statement of the reasons
13 and facts justifying the requested order."

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

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

10 To All Persons Interested in the Estate of

11 deceased:

12 You are hereby notified that on the day of

13 19....., the undersigned was appointed administrator of said estate.

14 Notice is hereby given that all persons indebted to said
15 estate are”.

1 Sec. 17. Section two hundred thirty-seven (237) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed and the following enacted in lieu thereof:

4 “Sec. 237. Presumption that surviving spouse elects to take
5 under will. In case the surviving spouse does not make an elec-
6 tion to take against the will and file it with the clerk of court
7 within six months from the date of second publication of notice
8 of admission of such will to probate, such surviving spouse shall
9 take under the provisions of the will, provided, however, that
10 if within such period an affidavit is filed setting forth that
11 such surviving spouse is incapable to make such election, the
12 court shall determine whether there shall be an election to take
13 against the will in accordance with section two hundred thirty-
14 eight (238) ; provided, further, that the court on application
15 may, prior to the expiration of such period, for cause shown,
16 enter an order extending the time for making such election.”

1 Sec. 18. 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. 19. 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
8 following:

9 “of the personal property of the estate plus the estimated
10 gross annual income of the estate during the period of admin-
11 istration.”

1 Sec. 20. Section two hundred ninety-three (293) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed and the following enacted in lieu thereof:

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

1 Sec. 21. Section two hundred ninety-five (295) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed and sections two hundred ninety-six (296) to
4 three hundred two (302), inclusive, are renumbered as two hundred
5 ninety-five (295) to three hundred one (301), inclusive.

1 Sec. 22. Chapter three hundred twenty-six (326), Acts 60th
2 General Assembly is amended by adding as sections three hundred
3 two (302) and three hundred three (303) the following:

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

8 which it governs.”

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

1 Sec. 23. Section three hundred three (303) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby
3 repealed and the following enacted as section three hundred four
4 (304) in lieu thereof:

5 “Sec. 304. Notice of probate of will with administration.
6 On admission of a will to probate, the executor shall, as soon
7 as letters are issued, cause to be published once each week for
8 two consecutive weeks in a daily or weekly newspaper of general
9 circulation published in the county in which the estate is pending,
10 a notice of admission of the will to probate and of the appoint-
11 ment of the executor, in which shall be included a notice that

12 any action to set aside the probate of said will must be brought
 13 within six months from the date of the second publication of said
 14 notice or thereafter be forever barred, and there shall also be
 15 included therein a notice to debtors to make payment, and to cred-
 16 itors having claims against said estate to file them with the
 17 clerk within six months from the second publication of said notice,
 18 or thereafter be forever barred.

19 Such notice shall be substantially in the following form :

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

22 In the District Court of Iowa

23 in and for County Probate No.

24 In the Estate of, Deceased

25 To All Persons Interested in the Estate

26 of Deceased:

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

36 Notice is further given that all persons indebted to said es-
 37 tate are requested to make immediate payment to the undersigned,
 38 and creditors having claims against said estate shall file them
 39 with the clerk of the above named district court, as provided by
 40 law, duly authenticated, for allowance; and unless so filed with-

41 in six months from the second publication of this notice (unless
42 otherwise allowed or paid) such claim shall thereafter be forever
43 barred.

44 Dated this day of, 19.....

45

46 Executor of said estate

47

48 Address

49

50 Attorney for said executor

51

52 Address

53 Date of second publication

54 day of, 19.....

55 (date to be inserted by publisher)"

1 Sec. 24. Section three hundred four (304) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby
3 repealed and the following enacted as section three hundred five
4 (305) in lieu thereof:

5 "Sec. 305. Notice where no administration. On admission of
6 a will to probate without administration of the estate, and upon
7 advanced payment of the costs thereof by the proponent, the clerk
8 shall cause to be published, in the manner prescribed in the
9 preceding section, a notice of the admission of the will to pro-
10 bate in which shall be included a notice that any action to set
11 aside said will must be brought within six months from the date
12 of the second publication of said notice 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
 21 day of, 19....., the last will
 22 and testament of, deceased,
 23 bearing date of the day of,
 24 19....., was admitted to probate in the above named court and
 25 there will be no present administration of the estate. Any
 26 action to set aside said will must be brought in the district
 27 court of said county within six months from the date of the
 28 second publication of this notice or thereafter be forever
 29 barred.

30 Dated this .. day of, 19.....

31

32 Clerk of the district court

33

34 Attorney for said estate

35

36 Address

37 Date of second publication

38 day of, 19.....

39 (date to be inserted by publisher)"

1 Sec. 25. Section three hundred eight (308) of chapter three
 2 hundred twenty-six (326), Acts 60th General Assembly is amended
 3 by striking from line three (3) the words "one year" and insert-
 4 ing in lieu thereof the words "six months".

1 Sec. 26. Sections three hundred five (305) to three hundred
2 nineteen (319), inclusive of chapter three hundred twenty-six
3 (326), Acts 60th General Assembly are renumbered as sections
4 three hundred six (306) to three hundred twenty (320), inclusive.

1 Sec. 27. Section three hundred thirty-six (336) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by adding in line five (5) after the word "estate" the
4 following:

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

1 Sec. 28. Chapter three hundred twenty-six (326), Acts 60th
2 General Assembly is amended by adding a new section before sec-
3 tion three 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
6 personal representative may continue to hold any investment or
7 property originally received by him and also any increase there-
8 of."

1 Sec. 29. Section three hundred fifty-two (352), of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking from line three (3) the words "such property"
4 and inserting in lieu thereof the words "the property of which
5 he has possession".

1 Sec. 30. Section three hundred sixty-five (365) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by inserting a comma in line two (2) after the word
4 "purposes".

1 Sec. 31. Section three hundred eighty-six (386) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is

3 hereby repealed and the following enacted in lieu thereof:

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

6 "1. Any real or personal property belonging to the decedent,
7 except exempt personal property and the homestead, may be sold,
8 mortgaged, pledged, leased or exchanged by the personal repre-
9 sentative for any of 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
14 court may direct, if not set off to the surviving spouse, may be
15 sold, mortgaged, pledged, leased, or exchanged, provided that
16 the surviving spouse consents thereto.

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

21 "4. The proceeds from the sale of any exempt personal prop-
22 erty or from the sale of the homestead shall be held by the
23 personal representative subject to the rights of the surviving
24 spouse or issue, unless such surviving spouse or issue has ex-
25 pressly waived his rights to such proceeds."

1 Sec. 32. Section three hundred eighty-seven (387) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed and the following enacted in lieu thereof:

4 "Sec. 387. Sale of personal property without order of court.
5 Personal property of a perishable nature and personal property
6 for which there is a regularly established market may be sold by

7 the personal representative without order of court.”

1 Sec. 33. Section three hundred eighty-nine (389) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed and the following enacted in lieu thereof:

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

1 Sec. 34. Section three hundred ninety (390) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby
3 repealed and the following enacted in lieu thereof:

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

1 Sec. 35. Section three hundred ninety-one (391) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed and the following enacted in lieu thereof:

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

1 Sec. 36. Section three hundred ninety-four (394) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed and the following enacted in lieu thereof:

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

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

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

21 "3. Effect of bond. If the conditions of the bond are com-
22 plied with, the property shall pass by devise, bequest, distri-
23 bution, or descent in the same manner as though there had been
24 no debts against the state."

1 Sec. 37. Section three hundred ninety-nine (399) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed 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 rep-
6 resentative shall make a verified report thereof to the court.

7 The court shall examine said report, and if satisfied that the
8 sale, mortgage, exchange, or lease has been at a price and upon
9 terms advantageous to the estate, and, in all respects, made in
10 conformity with law, and that it ought to be confirmed, shall
11 confirm the same and order the personal representative to deliver
12 a deed, mortgage, lease or other proper instruments to the persons
13 entitled thereto; provided, however, that in the event said real
14 property has been sold at private sale without an appraisal for
15 inheritance tax purposes or for purpose of such sale, or, if it
16 has been so appraised and has been sold at private sale for less
17 than the appraised value thereof, then, upon the filing of such
18 report, the court may enter an order fixing a time and place for
19 hearing thereon and prescribe a notice of such hearing to be
20 served upon all interested persons, any one of whom, prior to the
21 time fixed for such hearing, may file written objections to the
22 entry of an order approving said sale. If not satisfied that
23 the sale, mortgage, exchange, or lease has been made in conformity
24 with law and that it is to the best interests of the estate, the
25 court may reject the sale, mortgage, exchange, or lease, and
26 enter such orders as the court may deem advisable."

1 Sec. 38. Section four hundred (400) of chapter three hundred
2 twenty-six (326), Acts 60th General Assembly is hereby repealed
3 and the following enacted in lieu thereof:

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

1 Sec. 39. 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
4 section four hundred three (403) renumbered as section four hun-
5 dred one (401).

1 Sec. 40. Section four hundred ten (410) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from line two (2) the words "costs of administration"
4 and inserting in lieu thereof the word "charges".

1 Sec. 41. Section four hundred thirty-nine (439) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking from line three (3) the word "shall" and in-
4 serting in lieu thereof the word "may".

1 Sec. 42. Section four hundred forty-four (441) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking from lines six (6) and seven (7) the words
4 "as otherwise provided herein" and inserting in lieu thereof the
5 following:

6 "; provided, however, that a restatement of such claim shall
7 not be barred by the provisions of section four hundred ten (410)
8 of this Code."

1 Sec. 43. Section four hundred forty-nine (449) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking from line four (4) the words "and, in testate

4 matters, from the residuc of the estate.”

1 Sec. 44. Change the word “Proceeds” in the head note to sec-
2 tion four hundred seventy-two (472) of chapter three hundred
3 twenty-six (326), Acts 60th General Assembly to the word “Property”.

1 Sec. 45. Section four hundred seventy-eight (478) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed and the following enacted in lieu thereof:

4 “Sec. 478. Notice of application for discharge. Unless
5 notice be waived in writing, no personal representative shall be
6 discharged from further duty or responsibility upon final settle-
7 ment until notice of hearing on his final report or of an appli-
8 cation for discharge shall have been served upon all persons
9 interested at such time and in such manner as the court may pre-
10 scribe by an order made before or after the filing of the final
11 report.”

1 Sec. 46. Change the head note to section four hundred eighty
2 (480) of chapter three hundred twenty-six (326), Acts 60th Gen-
3 eral Assembly to “Certificate to county auditor for tax purposes
4 with administration.”

1 Sec. 47. Change the head note to section four hundred eighty-
2 one (481) of chapter three hundred twenty-six (326), Acts 60th
3 General Assembly to “Certificate to county auditor for tax pur-
4 poses without administration.”

1 Sec. 48. Section four hundred eighty-seven (487) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking from lines eleven (11) and twelve (12) the
4 words and figures “one hundred ninety (190)” and inserting in
5 lieu thereof the words and figures “one hundred eighty-six (186)”.

1 Sec. 49. Section four hundred ninety-seven (497) of chapter

2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking from lines two (2) and three (3) the words
4 and figures "provided in section three hundred thirty-one (331)"
5 and inserting in lieu thereof the words "from the date of the
6 death of the decedent".

1 Sec. 50. Section four hundred ninety-nine (499) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed.

1 Sec. 51. Section five hundred (500) of chapter three hundred
2 twenty-six (326), Acts 60th General Assembly is amended by strik-
3 ing from line one (1) the word "If" and inserting in lieu thereof
4 the words "Notwithstanding any other provision of this Code, if".

1 Sec. 52. Section five hundred two (502) of chapter three hun-
2 dred twenty-six (326), Acts 60th General Assembly is amended by
3 striking from line one (1) the word "The" and inserting in lieu
4 thereof the words "Notwithstanding any other provision of this
5 Code, the".

1 Sec. 53. Section five hundred twenty-seven (527) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking from line two (2) the words and figures "and
4 five hundred twenty-four (524)" and inserting in lieu thereof
5 the following:

6 " , five hundred twenty-four (524) and five hundred twenty-six
7 (526)".

1 Sec. 54. Section five hundred sixty-six (566) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking subsection four (4) and inserting in lieu
4 thereof the following:

5 "4. The estimated present value of the real estate, the

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

1 Sec. 55. Section five hundred eighty (580) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended
3 by striking subsection four (4) and inserting in lieu thereof
4 the following:

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

1 Sec. 56. Section six hundred sixteen (616) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended
3 by striking from line five (5) the word "ward" and inserting in
4 lieu thereof the word "veteran".

1 Sec. 57. Section six hundred eighteen (618) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is amended
3 by striking from line six (6) the word "twenty-five" and inserting
4 in lieu thereof the word "fifty".

1 Sec. 58. 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
5 (3) and renumbering the following subsections.

1 Sec. 59. Section six hundred thirty-five (635) of chapter

2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking all of lines six (6) and seven (7) and in-
4 serting in lieu thereof the following:

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

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

1 Sec. 61. Section six hundred forty-six (646) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby
3 repealed and the following enacted in lieu thereof:

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

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

11 "2. To sell and transfer personal property of a perishable
12 nature and personal property for which there is a regularly es-
13 tablished market.

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
17 twenty-three (123), to continue to hold any investment or other
18 property originally received by him, and also any increase there-
19 of, pending the timely filing of the first annual report."

1 Sec. 62. Section six hundred forty-seven (647) of chapter

2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by inserting after subsection four (4) a new subsection
4 as follows and renumbering the next subsection:

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

1 Sec. 63. Section six hundred forty-eight (648) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking from line three (3) the word and figures
4 "forty-six (646)" and inserting in lieu thereof the following:

5 "forty-seven (647)".

1 Sec. 64. Section six hundred seventy-one (671) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking subsection three (3) and inserting in lieu
4 thereof the following:

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

1 Sec. 65. Section six hundred seventy-seven (677) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 hereby repealed and the following enacted in lieu thereof:

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

11 may prescribe.”

1 Sec. 66. Section six hundred ninety-nine (699) of chapter
2 three hundred twenty-six (326), Acts 60th General Assembly is
3 amended by striking subsection two (2) and inserting in lieu
4 thereof the following:

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

1 Sec. 67. Section seven hundred (700) of chapter three hundred
2 twenty-six (326), Acts 60th General Assembly is amended by strik-
3 ing subsection three (3) and inserting in lieu thereof the
4 following:

5 “3. Any change in investments since the last previous report,
6 including a list of all assets, and recommendations of the trust-
7 tee for the retention or disposition of any property held by the
8 trustee.”

1 Sec. 68. Section seven hundred one (701) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby
3 repealed and the following enacted in lieu thereof:

4 “Sec. 701. Final report of trustee. Upon the partial or
5 total termination of a trust, or upon the transfer of the trust-
6 teeship due to resignation, removal, dissolution, or other dis-
7 qualification of the trustee of any trust pending in court, the
8 trustee shall make a final report to the court, showing for the
9 period since the filing of the last report the facts required
10 for an intermediate report; provided, however, that unless specif-

11 ically required by the court to do so, he shall not in any event.
12 be required to report such facts for any period of time as to
13 which he has, under any of the provisions of section seven hun-
14 dred (700), been expressly relieved from reporting. In any
15 event, the final report of the trustee shall include the
16 following:

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

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

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

1 Sec. 69. Section seven hundred two (702) of chapter three
2 hundred twenty-six (326), Acts 60th General Assembly is hereby
3 repealed and the following enacted in lieu thereof:

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

1 Sec. 70. Sections six hundred eighty-two point forty-eight
2 (682.48) to six hundred eighty-two point fifty-nine (682.59),
3 inclusive, Code 1962, are hereby repealed.

1 Sec. 71. Section two hundred forty-nine point nineteen
2 (249.19), Code 1962, is amended by striking from line eight (8)
3 the word "second" and inserting in lieu thereof the word "sixth".

EXPLANATION OF SENATE FILE 49

This bill contains technical amendments and revisions to make certain sections of the Iowa Probate Code more clear and concise. Uniform Probate Rules No. 1, 2, 4, 5, and 6 adopted by the Supreme Court of Iowa under the provisions of the Iowa Probate Code are now included as part of the bill. The provisions for notice in probate proceedings and the procedure for sale of property are made more specific. The bill also provides as follows:

The Clerk of Court is required to mail copies of instruments creating charitable trusts to the Attorney General with the provision that the Attorney General may appear in the interest of the public and request that his office receive notice of any matters in the probate proceedings. Actions to recover property sold by a fiduciary are limited to five years. This is an adaptation of Section 635.40 of the 1962 Code.

Lawful adoption cuts off rights of inheritance from natural parent, except where one of the natural parents is married to the adopting parent. This provision is in keeping with the laws relating to adoption which require that the adoption records be sealed and a new birth certificate issued to the adopted child. The present law on inheritance makes for uncertainty in titles to real estate and the provisions for the sealing of the adoption records make it almost impossible to trace the parentage of adopted children.

The signature to a will may be proved without prior notice. The present law requiring one publication in a newspaper at least seven days prior to proving the signatures creates added expenses in the estate and delays the opening of administration of estate where there is a will. The rights of any person to later contest the signatures or due execution of the will are protected. The period for contesting wills is reduced from a year to six months. This period of six months is the same period provided for creditors to file claims against the estate.

The Uniform Prudent Man Investment Rule is included as a part of this bill. This is a rule of conduct as well as investment and has been adopted in a majority of states.

The surviving spouse is presumed to take under the provisions of the will unless she files an election to take the share to which she would be entitled had there been no will.

SENATE FILE 49
(Committee Amendment)

- 1 Amend Senate File 49 by striking sections
- 2 14 and 25 and renumbering the remaining sections.

Filed
February 10, 1965.

By COMMITTEE ON JUDICIARY,
GEORGE E. O'MALLEY, *Chairman*.

SENATE FILE 49

- 1 Amend Senate File 49 by striking from lines 6
- 2 and 7 of section 22 the words and figures "three
- 3 hundred two (302)" and inserting in lieu thereof the
- 4 words and figures "three hundred one (301)".

Filed
February 17, 1965.

By SHAFR.

SENATE FILE 49

- 1 Amend the title to Senate File 49 by striking the period (.) after
- 2 the word "Code" and insert the following: "and old age
- 3 assistance and medical assistance for the aged."
- 4 Amend Senate File 49 further by adding the following new sections:
- 5 Sec. 72. Section two hundred forty-nine A point thir-
- 6 teen (249A.13), Code 1962, is hereby amended by striking from
- 7 line twenty-one (21) the word "second" and inserting in lieu
- 8 thereof the word "sixth (6th)".
- 9 Sec. 73. Section two hundred forty-nine A point fourteen
- 10 (249A.14), Code 1962, is hereby amended by striking from line
- 11 seven (7) the word "second" and inserting in lieu thereof the
- 12 word "sixth (6th)".

Filed
February 18, 1965.

By O'MALLEY.

SENATE FILE 49

- 1 Amend Senate File 49 by adding thereto the following new
- 2 section:
- 3 Sec. 74. Section two hundred forty-nine point nineteen
- 4 (249A.19), Code 1962, is hereby amended by striking from line
- 5 eight (8) the word "second" and inserting in lieu thereof
- 6 the word "sixth (6th)".

Filed
February 22, 1965.

By O'MALLEY.

SENATE FILE 49

- 1 Amend Senate File 49 as follows:
2 1. By inserting a new section following section 26 as
3 follows:
4 "Chapter three hundred twenty-six (326), Acts of the Sixtieth
5 General Assembly, is amended by adding as section three
6 hundred twenty-one (321) the following:
7 'Sec. 321. Validity of acts of personal representative where
8 the probate of the will is subsequently set aside. The removal
9 of a personal representative, after letters have been issued
10 to him, in connection with the setting aside of the previous
11 probate of a will, shall not invalidate the official acts of the
12 personal representative performed prior to removal, including
13 sales of real estate to good faith purchasers for value.'
14 2. By renumbering the remaining sections.

Filed
February 24, 1965.

By RILEY.

SENATE FILE 49

- 1 Amend Senate File 49 as follows:
2 1. Amend section twenty-three (23), line seventeen (17),
3 by striking the words "six months" and inserting in lieu
4 thereof the words "one year".
5 2. Amend section twenty-four (24), line twenty-seven (27),
6 by striking the words "six months" and inserting in lieu
7 thereof the words "one year".

Filed
March 8, 1965.

JACKSON of Clinton.

SENATE FILE 49

- 1 Amend Senate File 49 as follows:
2 1. By adding a new section following section forty (40)
3 as follows:
4 "Section four hundred fifteen (415) of chapter three hundred
5 twenty-six (326), Acts of the 60th General Assembly is amended
6 by striking the first two paragraphs thereof and substituting
7 in lieu thereof the following:
8 'Any action pending against the decedent at the time of his
9 death that survives, shall also be considered a claim filed
10 against the estate if notice of substitution is served upon the
11 personal representative as defendant within the time provided
12 for filing claims in section four hundred ten (410). A copy of
13 the proof of service of notice of such proceedings shall be filed
14 in the probate proceedings but shall not be jurisdictional.
15 A separate action based on a debt or other liability of the
16 decedent may be commenced against a personal representative
17 of the decedent in lieu of filing a claim in the estate. Such
18 an action shall be commenced by serving an original notice on
19 the personal representative within the time provided for filing
20 claims in section four hundred ten (410) and such action shall
21 also be considered a claim filed against the estate. Such action
22 may be commenced only in a county wherein the venue would have
23 been proper had the decedent survived and the action been
24 commenced against him. A copy of the proof of service of
25 notice shall be filed in the probate proceedings but shall not
26 be jurisdictional.'
27 2. By renumbering the remaining sections.

Filed
March 24, 1965.

SENATE JUDICIARY COMMITTEE,
JOHN DUFFY, Chairman.

SENATE FILE 49

1 Amend Senate File 49 by striking lines 4 through 16 of
2 section 17 thereof, and substituting therefor the following:
3 "Sec. 237. Presumption that surviving spouse elects to
4 take under will. Where a voluntary election to take or refuse
5 to take under a will has not been filed by a surviving spouse
6 within two (2) months of the date of the second publication of
7 notice of admission of the will to probate, and the surviving
8 spouse is not the executor of such will, it shall be the duty of
9 the executor to cause to be served a written notice upon the
10 surviving spouse in the manner directed by the court, advising
11 the surviving spouse that the will of such decedent has been
12 admitted to probate, stating the name of the court where the
13 will was admitted and the date when the will was admitted to
14 probate, and notifying such spouse that unless within four (4)
15 months after service of such notice, he files an election in
16 writing with the clerk of such court refusing to take under the
17 provisions of such will, such surviving spouse shall take under the
18 provisions of the will; provided that if the surviving spouse files
19 his election to take under the will at any time the requirements
20 of this section for serving notice are thereby waived; provided,
21 further, that if within the before described period of four (4)
22 months an affidavit is filed setting forth that such surviving
23 spouse is incapable to make such election, the court shall
24 determine whether there shall be an election to take against
25 the will in accordance with section two hundred thirty-eight
26 (238); provided further, that the court on application may, prior
27 to the expiration of such period of four (4) months, for cause
28 shown, enter an order extending the time for making such
29 election. If such surviving spouse shall be an executor of
30 the will and fails, within six (6) months after the date of the
31 second publication of notice of admission of the will to probate,
32 to file with the clerk of the court an election to refuse to take
33 under the provisions of the will of the deceased, it shall be
34 conclusively presumed that such survivor consents to the
35 provisions of the will and elects to take thereunder."

Filed *Adopted*
March 30, 1965. *Senate Amendment* BAILEY of Wright.

SENATE FILE 49

1 Amend Senate File 49 as follows:
2 1. By striking all of section twenty (20).
3 2. By renumbering the remaining section.

Filed *Adopted*
April 7, 1965. KEMPTER of Jackson.

SENATE FILE 49

1 Amend the Jackson amendment to Senate File
2 49 as follows:
3 1. Section 1, line 2, strike "seventeen (17)"
4 and insert in lieu thereof "thirteen (13), and
5 line thirty-three (33)."
6 2. Section 2, line 5, after "(27)," insert "and
7 line eleven (11)."

Filed and adopted *Adopted*
April 12, 1965. JACKSON of Clinton.

AMENDMENT TO SENATE FILE 49
(Corrective Amendment to Jackson of Clinton
Amendment Filed on March 8, 1965)

1 Amend Senate File 49 as follows:
2 1. Amend section twenty-two (22), line seventeen (17),
3 by striking the words "six months" and inserting in lieu
4 thereof the words "one year".
5 2. Amend section twenty-three, line twenty-seven (27),
6 by striking the words "six months" and inserting in lieu
7 thereof the words "one year".

Filed and adopted *Adopted*
April 12, 1965. JACKSON of Clinton.

SENATE AMENDMENT TO HOUSE AMENDMENT TO
SENATE FILE 49

1 Amend the House amendment to Senate File 49, by striking
2 the period in line 35 of division 1 and inserting in lieu thereof
3 the following:
4 "; provided, further, that the court on application may, prior
5 to the expiration of such period of six (6) months, on cause
6 shown, enter an order extending the time for making such
7 election."

Filed and adopted *Adopted*
April 14, 1965. By RILEY, O'MALLEY and VANCE.