

FILED MAY 21 1975

SENATE FILE 541

By COMMITTEE ON JUDICIARY

Passed Senate, Date 6-2-75 (1667) Passed House, Date 6-18-75 (2664)

Vote: Ayes 39 Nays 2 Vote: Ayes 94 Nays 0

Approved 7-14-75

*Passed Senate per House amendment
6-19-75 (2201)
44-0*

A BILL FOR

- 1 An Act relating to the probate code.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
- 3
- 4
- 5
- 6
- 7

HOUSE AMENDMENT TO SENATE FILE 541

S-4272

- 1 Amend Senate File 541 as passed by the Senate
- 2 as follows:
- 3 1. Page 5, line 25, by striking the word "spouse"
- 4 and inserting in lieu thereof the word "spouse,".
- 5 2. Page 5, line 25, by striking the word
- 6 "property," and inserting in lieu thereof the word
- 7 "property7".

S-4272 FILED
JUNE 18, 1975

RECEIVED FROM THE HOUSE

Senate concurred 6/19 (2201)

20

21

22

H-4207

- 1 Amend Senate File 541 as passed by the Senate as
- 2 follows:
- 3 1. Page 5, line 25, by striking the word "spouse"
- 4 and inserting in lieu thereof the word "spouse,".
- 5 2. Page 5, line 25, by striking the word "property,"
- 6 and inserting in lieu thereof the word "property7".

H-4207 FILED - *Adopted 6/18 (2663)*
JUNE 11, 1975

BY JESSE of Polk

1 Section 1. Section four hundred twenty-two point twenty-
2 seven (422.27), subsection one (1), Code 1975, is amended
3 to read as follows:

4 1. No final account of ~~a-fiduciary~~ an executor, adminis-
5 trator, or trustee shall be allowed by any court unless such
6 account shows, and the judge of said court finds, that all
7 taxes imposed by the provisions of this division upon ~~said~~
8 fiduciary the executor, administrator, or trustee, which have
9 become payable, have been paid, and that all taxes which may
10 become due are secured by bond, deposit or otherwise. The
11 certificate of the director and the receipt for the amount
12 of the tax therein certified shall be conclusive as to the
13 payment of the tax to the extent of said certificate.

14 Sec. 2. Section six hundred thirty-three point three
15 (633.3), subsection eight (8), Code 1975, is amended to read
16 as follows:

17 8. COSTS OF ADMINISTRATION--includes court costs,
18 fiduciary's fees, attorney fees, all appraisers' fees, premiums
19 on corporate surety bonds, statutory allowance for support
20 of surviving spouse and children, cost of continuation of
21 abstracts of title, recording fees, transfer fees, transfer
22 taxes, agents' fees allowed by order of court, and all other
23 fees and expenses allowed by order of court in connection
24 with the administration of the estate. Court costs shall
25 include expenses of selling property.

26 Sec. 3. Section six hundred thirty-three point twenty-
27 two (633.22), Code 1975, is amended by adding the following
28 new subsection:

29 NEW SUBSECTION. 5. The approval, when notice has been
30 waived by all persons interested, of petitions and reports,
31 or joint petitions and reports, in respect to the sale, mort-
32 gage, pledge, lease or exchange of property pursuant to sec-
33 tions six hundred thirty-three point three hundred eighty-
34 six (633.386) through six hundred thirty-three point four
35 hundred (633.400) of the Code.

1 Sec. 4. Section six hundred thirty-three point twenty-
2 three (633.23), Code 1975, is amended to read as follows:

3 633.23 CLERK'S ACTIONS REVIEWED. Any person aggrieved
4 by any order made or entered by the clerk under the powers
5 conferred in section 633.22, subsections one (1) through four
6 (4), may have the same reviewed in court upon motion filed
7 within six months or before the hearing on the final report
8 of the fiduciary, whichever is the earlier, and upon such
9 notice as ~~the court may prescribe~~ provided in section six
10 hundred thirty-three point forty (633.40) of the Code.

11 Sec. 5. Section six hundred thirty-three point ninety-
12 five (633.95), Code 1975, is amended to read as follows:

13 633.95 RELEASE OF LIENS AND MORTGAGES. Any fiduciary
14 qualified under the laws of this state may, without prior
15 order of court, ~~release, assign~~ or discharge, in whole or
16 in part any mortgage, judgment or other lien held by the
17 estate.

18 Sec. 6. Section six hundred thirty-three point three
19 hundred four (633.304), Code 1975, is amended to read as
20 follows:

21 633.304 NOTICE OF PROBATE OF WILL WITH ADMINISTRATION.
22 On admission of a will to probate, the executor shall, as
23 soon as letters are issued, cause to be published once each
24 week for two consecutive weeks in a daily or weekly newspaper
25 of general circulation published in the county in which the
26 estate is pending, a notice of admission of the will to probate
27 and of the appointment of the executor, in which shall be
28 included a notice that any action to set aside the probate
29 of said will must be brought within ~~one-year~~ six months from
30 the date of the second publication of said notice or thereafter
31 be forever barred, and there shall also be included therein
32 a notice to debtors to make payment, and to creditors having
33 claims against said estate to file them with the clerk within
34 six months from the second publication of said notice, or
35 thereafter be forever barred.

1 Such notice shall be substantially in the following form:

2 Notice of Probate of Will, of Appointment of Executor,
3 and Notice to Creditors

4 In the District Court of Iowa

5 in and for County. Probate No.

6 In the Estate of, Deceased

7 To All Persons Interested in the Estate of

8, Deceased:

9 You are hereby notified that on the day of

10, 19..., the last will and testament of

11, deceased, bearing date of the day

12 of, 19..., was admitted to probate in the above

13 named court and thatwas appointed execu-

14 tor of said estate. Any action to set aside said will must

15 be brought in the district court of said county within ~~one~~

16 year six months from the date of the second publication of

17 this notice, or thereafter be forever barred.

18 Notice is further given that all persons indebted to said

19 estate are requested to make immediate payment to the under-

20 signed, and creditors having claims against said estate shall

21 file them with the clerk of the above named district court,

22 as provided by law, duly authenticated, for allowance; and

23 unless so filed within six months from the second publication

24 of this notice (unless otherwise allowed or paid) such claim

25 shall thereafter be forever barred.

26 Dated this day of, 19....

27

28 Executor of said estate

29

30 Address

31

32 Attorney for said executor

33

34 Address

35 Date of second publication

1 day of, 19....

2 (Date to be inserted by publisher)

3 This section is applicable to wills admitted to probate
4 on or after July 1, 1975.

5 Sec. 7. Section six hundred thirty-three point three
6 hundred five (633.305), Code 1975, is amended to read as
7 follows:

8 633.305 NOTICE WHERE NO ADMINISTRATION. On admission
9 of a will to probate without administration of the estate,
10 and upon advanced payment of the costs thereof by the
11 proponent, the clerk shall cause to be published, in the
12 manner prescribed in the preceding section, a notice of the
13 admission of the will to probate in which shall be included
14 a notice that any action to set aside said will must be brought
15 within ~~one-year~~ six months from the date of the second publica-
16 tion of said notice or thereafter be barred.

17 Such notice shall be substantially in the following form:

18 Notice of Proof of Will

19 Without Administration

20 In the District Court of Iowa
21 in and for County. Probate No.
22 In the Estate of, Deceased
23 To All Persons Interested in the Estate of
24, Deceased:

25 You are hereby notified that on the day of
26, 19..., the last will and testament of
27, deceased, bearing date of the
28 day of, 19..., was admitted to probate in the
29 above named court and there will be no present administration
30 of the estate. Any action to set aside said will must be
31 brought in the district court of said county within ~~one-year~~
32 six months from the date of the second publication of this
33 notice or thereafter be forever barred.

34 Dated this day of, 19....
35

1 Clerk of the district court

2

3 Attorney for said estate

4

5 Address

6 Date of second publication

7 day of, 19....

8 (Date to be inserted by publisher)

9 This section is applicable to wills admitted to probate
10 on or after July 1, 1975.

11 Sec. 8. Section six hundred thirty-three point three
12 hundred nine (633.309), Code 1975, is amended to read as
13 follows:

14 633.309 TIME WITHIN WHICH ACTION MUST BE COMMENCED. An
15 action to contest or set aside the probate of a will must
16 be commenced in the court in which the will was admitted to
17 probate within one-year six months from the date of second
18 publication of notice of admission of such will to probate
19 and not thereafter. This section is applicable to wills
20 admitted to probate on or after July 1, 1975.

21 Sec. 9. Section six hundred thirty-three point three
22 hundred thirty-two (633.332), Code 1975, is amended to read
23 as follows:

24 633.332 EXEMPT PERSONAL PROPERTY. When the decedent left
25 a surviving spouse all personal property, which in the hands
26 of the decedent as head of a family would be exempt from ex-
27 ecution, ~~after-being-inventoried-and-appraised, shall be~~ which
28 is bequeathed or set aside to the surviving spouse, and in
29 accordance with the provisions of this chapter, shall be
30 exempt in the hands of such surviving spouse as in the hands
31 of the decedent.

32 Sec. 10. Section six hundred thirty-three point three
33 hundred fifty-two (633.352), Code 1975, is amended to read
34 as follows:

35 633.352 COLLECTION OF RENTS AND PAYMENT OF TAXES AND

1 CHARGES. Unless otherwise provided by the will, the personal
2 representative shall collect the income from the property
3 of which he has possession, pay the taxes and fixed charges
4 thereon and apply the balance of such income to general estate
5 obligations. Unless otherwise provided by will, any unex-
6 pended portion of such income shall become a part of the
7 general assets of such estate.

8 Sec. 11. Section six hundred thirty-three point three
9 hundred seventy-five (633.375), Code 1975, is amended to read
10 as follows:

11 633.375 REVIEW OF ALLOWANCE TO SURVIVING SPOUSE. The
12 court may, upon the petition of the spouse, or other person
13 interested, and after hearing pursuant to notice to all
14 interested parties, review such allowance and increase or
15 decrease the same.

16 Sec. 12. Section six hundred thirty-three point four
17 hundred thirty-seven (633.437), Code 1975, is amended to read
18 as follows:

19 633.437 CONTRARY PROVISION AS TO ABATEMENT. If, upon
20 application to the court by a fiduciary or a distributee,
21 and after notice to all interested parties, the court finds
22 it clear and convincing that the provisions of the will, the
23 testamentary plan, or the express or the implied purpose of
24 the devise would be defeated by the order of abatement stated
25 in section 633.436, the court shall determine the order of
26 abatement the shares of distributees shall abate in such other
27 manner as may be found necessary to give effect to the
28 intention of the testator.

29 Sec. 13. Section six hundred thirty-three point six hun-
30 dred fourteen (633.614), Code 1975, is amended to read as
31 follows:

32 633.614 APPLICATION OF OTHER PROVISIONS TO VETERANS' CON-
33 SERVATORSHIPS. Whenever moneys are paid or are payable pur-
34 suant to any law of the United States through the veterans
35 administration to a conservator or a guardian, the provisions

1 of sections 633.615 to ~~633.624~~ six hundred thirty-three point
2 six hundred twenty-two (633.622) of the Code shall apply to
3 the administration of said moneys. However, such provisions
4 shall be construed to be supplementary to the other provisions
5 for conservators, and shall not be exclusive of such
6 provisions.

7 Sec. 14. Section six hundred thirty-three point six hun-
8 dred twenty-two (633.622), Code 1975, is amended by striking
9 the section and inserting in lieu thereof the following:

10 633.622 BOND REQUIREMENTS. In administering moneys paid
11 by the veterans administration the conservator, unless it
12 is a bank or trust company qualified to act as a fiduciary
13 in this state, shall execute and file with the clerk a bond
14 by a recognized surety company equal to such moneys and the
15 annual income therefrom, plus the expected annual veterans
16 administration benefit payments.

17 Sec. 15. Chapter six hundred thirty-three (633), divi-
18 sion sixteen (XVI), Code 1975, is amended by adding the
19 following new section:

20 NEW SECTION. WHEN POWER OF ATTORNEY NOT AFFECTED BY
21 DISABILITY. Whenever a principal designates another his
22 attorney in fact or agent by a power of attorney in writing
23 and the writing contains the words "This power of attorney
24 shall not be affected by disability of the principal", or
25 "This power of attorney shall become effective upon the
26 disability of the principal", or similar words showing the
27 intent of the principal that the authority conferred shall
28 be exercisable notwithstanding his disability, the authority
29 of the attorney in fact or agent is exercisable by him as
30 provided in the power on behalf of the principal notwithstand-
31 ing later disability or incapacity of the principal or later
32 uncertainty as to whether the principal is dead or alive.
33 All acts done by the attorney in fact or agent pursuant to
34 the power during any period of disability or incompetence
35 or uncertainty as to whether the principal is dead or alive

1 have the same effect and inure to the benefit of and bind
2 the principal and his heirs, devisees and personal represen-
3 tatives as if the principal were alive, competent and not
4 disabled. If a conservator thereafter is appointed for the
5 principal, the attorney in fact or agent, during the con-
6 tinuance of the appointment, shall account to the conservator
7 rather than the principal, and the conservator shall have
8 the power to revoke the power of attorney on behalf of the
9 principal.

10 Sec. 16. Chapter six hundred thirty-three (633), division
11 sixteen (XVI), Code 1975, is amended by adding the following
12 new section:

13 NEW SECTION. OTHER POWERS OF ATTORNEY NOT REVOKED UNTIL
14 NOTICE OF DEATH OR DISABILITY.

15 1. The death, disability, or incompetence of any principal
16 who has executed a power of attorney in writing other than
17 a power as described by section fifteen (15) of this Act,
18 does not revoke or terminate the agency as to the attorney
19 in fact, agent or other person who, without actual knowledge
20 of the death, disability, or incompetence of the principal,
21 acts in good faith under the power of attorney or agency.
22 Any action so taken, unless otherwise invalid or unenforceable,
23 binds the principal and his heirs, devisees, and personal
24 representatives.

25 2. An affidavit, executed by the attorney in fact or agent
26 stating that he did not have, at the time of doing an act
27 pursuant to the power of attorney actual knowledge of the
28 revocation or termination of the power of attorney, by death,
29 disability or incompetence, is, in the absence of fraud,
30 conclusive proof of the nonrevocation or nontermination of
31 the power at that time. If the exercise of the power requires
32 execution and delivery of any instrument which is recordable,
33 the affidavit when properly acknowledged is likewise
34 recordable.

35 3. This section shall not be construed to alter or affect

1 any provision for revocation or termination contained in the
2 power of attorney.

3 Sec. 17. Sections six hundred thirty-three point six hun-
4 dred sixteen (633.616), six hundred thirty-three point six
5 hundred seventeen (633.617), six hundred thirty-three point
6 six hundred eighteen (633.618), six hundred thirty-three point
7 six hundred nineteen (633.619), six hundred thirty-three point
8 six hundred twenty (633.620), and six hundred thirty-three
9 point six hundred twenty-one (633.621), Code 1975, are
10 repealed.

11 EXPLANATION

12 This bill defines the class of persons required to file
13 a final fiduciary return by exempting conservators and
14 guardians. This bill also allows the clerk of the probate
15 court, when notice is waived, to approve the sale of property
16 by a fiduciary. This bill also prohibits a fiduciary from
17 assigning a lien or mortgage without court approval. This
18 bill also provides that exempt property will only retain its
19 exempt character when bequeathed or set aside to the spouse.
20 This bill also provides that a power of attorney may be drafted
21 to remain effective in the event the principal becomes disabled
22 and provides that a regular power of attorney shall remain
23 in effect until the agent has actual knowledge of the
24 principal's death or disability. This also shortens time
25 for setting aside wills from one year to six months, changes
26 abatement, allows review of spouse and dependent child's
27 allowance and deletes certain Veterans Administration
28 conservatorship sections.

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SENATE FILE 541

AN ACT

RELATING TO THE PROBATE CODE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section four hundred twenty-two point twenty-seven (422.27), subsection one (1), Code 1975, is amended to read as follows:

1. No final account of a fiduciary an executor, administrator, or trustee shall be allowed by any court unless such account shows, and the judge of said court finds, that all taxes imposed by the provisions of this division upon said fiduciary the executor, administrator, or trustee, which have become payable, have been paid, and that all taxes which may become due are secured by bond, deposit or otherwise. The certificate of the director and the receipt for the amount of the tax therein certified shall be conclusive as to the payment of the tax to the extent of said certificate.

Sec. 2. Section six hundred thirty-three point three (633.3), subsection eight (8), Code 1975, is amended to read as follows:

8. COSTS OF ADMINISTRATION--includes court costs, fiduciary's fees, attorney fees, all appraisers' fees, premiums on corporate surety bonds, statutory allowance for support of surviving spouse and children, cost of continuation of abstracts of title, recording fees, transfer fees, transfer taxes, agents' fees allowed by order of court, and all other fees and expenses allowed by order of court in connection with the administration of the estate. Court costs shall include expenses of selling property.

Sec. 3. Section six hundred thirty-three point twenty-two (633.22), Code 1975, is amended by adding the following new subsection:

NEW SUBSECTION. 5. The approval, when notice has been

waived by all persons interested, of petitions and reports, or joint petitions and reports, in respect to the sale, mortgage, pledge, lease or exchange of property pursuant to sections six hundred thirty-three point three hundred eighty-six (633.386) through six hundred thirty-three point four hundred (633.400) of the Code.

Sec. 4. Section six hundred thirty-three point twenty-three (633.23), Code 1975, is amended to read as follows:

633.23 CLERK'S ACTIONS REVIEWED. Any person aggrieved by any order made or entered by the clerk under the powers conferred in section 633.22, subsections one (1) through four (4), may have the same reviewed in court upon motion filed within six months or before the hearing on the final report of the fiduciary, whichever is the earlier, and upon such notice as the court may prescribe provided in section six hundred thirty-three point forty (633.40) of the Code.

Sec. 5. Section six hundred thirty-three point ninety-five (633.95), Code 1975, is amended to read as follows:

633.95 RELEASE OF LIENS AND MORTGAGES. Any fiduciary qualified under the laws of this state may, without prior order of court, ~~release~~ assign or discharge, in whole or in part any mortgage, judgment or other lien held by the estate.

Sec. 6. Section six hundred thirty-three point three hundred four (633.304), Code 1975, is amended to read as follows:

633.304 NOTICE OF PROBATE OF WILL WITH ADMINISTRATION. On admission of a will to probate, the executor shall, as soon as letters are issued, cause to be published once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the estate is pending, a notice of admission of the will to probate and of the appointment of the executor, in which shall be included a notice that any action to set aside the probate of said will must be brought within ~~one year~~ six months from the date of the second publication of said notice or thereafter

be forever barred, and there shall also be included therein a notice to debtors to make payment, and to creditors having claims against said estate to file them with the clerk within six months from the second publication of said notice, or thereafter be forever barred.

Such notice shall be substantially in the following form:

Notice of Probate of Will, of Appointment of Executor, and Notice to Creditors
In the District Court of Iowa
in and for County. Probate No.
In the Estate of, Deceased
To All Persons Interested in the Estate of
....., Deceased:

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

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

Dated this day of, 19....

.....
Executor of said estate

.....
Address
.....

Attorney for said executor
.....

Address

Date of second publication

..... day of, 19....

(Date to be inserted by publisher)

This section is applicable to wills admitted to probate on or after July 1, 1975.

Sec. 7. Section six hundred thirty-three point three hundred five (633.305), Code 1975, is amended to read as follows:

633.305 NOTICE WHERE NO ADMINISTRATION. On admission of a will to probate without administration of the estate, and upon advanced payment of the costs thereof by the proponent, the clerk shall cause to be published, in the manner prescribed in the preceding section, a notice of the admission of the will to probate in which shall be included a notice that any action to set aside said will must be brought within one-year six months from the date of the second publication of said notice or thereafter be barred.

Such notice shall be substantially in the following form:

Notice of Proof of Will

Without Administration

In the District Court of Iowa
in and for County. Probate No.
In the Estate of, Deceased
To All Persons Interested in the Estate of
....., Deceased:

You are hereby notified that on the day of, 19..., the last will and testament of, deceased, bearing date of the day of, 19..., was admitted to probate in the above named court and there will be no present administration of the estate. Any action to set aside said will must be brought in the district court of said county within one-year six months from the date of the second publication of this

notice or thereafter be forever barred.

Dated this day of, 19....

.....

Clerk of the district court

.....

Attorney for said estate

.....

Address

Date of second publication

..... day of, 19....

(Date to be inserted by publisher)

This section is applicable to wills admitted to probate on or after July 1, 1975.

Sec. 8. Section six hundred thirty-three point three hundred nine (633.309), Code 1975, is amended to read as follows:

633.309 TIME WITHIN WHICH ACTION MUST BE COMMENCED. An action to contest or set aside the probate of a will must be commenced in the court in which the will was admitted to probate within one-year six months from the date of second publication of notice of admission of such will to probate and not thereafter. This section is applicable to wills admitted to probate on or after July 1, 1975.

Sec. 9. Section six hundred thirty-three point three hundred thirty-two (633.332), Code 1975, is amended to read as follows:

633.332 EXEMPT PERSONAL PROPERTY. When the decedent left a surviving spouse, all personal property, which in the hands of the decedent as head of a family would be exempt from execution, ~~after-being-inventoried-and-appraised, shall-be which is bequeathed or~~ set aside to the surviving spouse, ~~and in accordance with the provisions of this chapter, shall be~~ exempt in the hands of such surviving spouse as in the hands of the decedent.

Sec. 10. Section six hundred thirty-three point three hundred fifty-two (633.352), Code 1975, is amended to read

as follows:

633.352 COLLECTION OF RENTS AND PAYMENT OF TAXES AND CHARGES. Unless otherwise provided by the will, the personal representative shall collect the income from the property of which he has possession, pay the taxes and fixed charges thereon and apply the balance of such income to general estate obligations. Unless otherwise provided by will, any unexpended portion of such income shall become a part of the general assets of such estate.

Sec. 11. Section six hundred thirty-three point three hundred seventy-five (633.375), Code 1975, is amended to read as follows:

633.375 REVIEW OF ALLOWANCE TO SURVIVING SPOUSE. The court may, upon the petition of the spouse, or other person interested, and after hearing pursuant to notice to all interested parties, review such allowance and increase or decrease the same.

Sec. 12. Section six hundred thirty-three point four hundred thirty-seven (633.437), Code 1975, is amended to read as follows:

633.437 CONTRARY PROVISION AS TO ABATEMENT. If, upon application to the court by a fiduciary or a distributee, and after notice to all interested parties, the court finds it clear and convincing that the provisions of the will, the testamentary plan, or the express or the implied purpose of the devise would be defeated by the order of abatement stated in section 633.436, the court shall determine the order of abatement the shares of distributees shall abate in such other manner as may be found necessary to give effect to the intention of the testator.

Sec. 13. Section six hundred thirty-three point six hundred fourteen (633.614), Code 1975, is amended to read as follows:

633.614 APPLICATION OF OTHER PROVISIONS TO VETERANS' CONSERVATORSHIPS. Whenever moneys are paid or are payable pursuant to any law of the United States through the veterans

administration to a conservator or a guardian, the provisions of sections 633.615 to ~~633.624~~ six hundred thirty-three point six hundred twenty-two (633.622) of the Code shall apply to the administration of said moneys. However, such provisions shall be construed to be supplementary to the other provisions for conservators, and shall not be exclusive of such provisions.

Sec. 14. Section six hundred thirty-three point six hundred twenty-two (633.622), Code 1975, is amended by striking the section and inserting in lieu thereof the following:

633.622 BOND REQUIREMENTS. In administering moneys paid by the veterans administration the conservator, unless it is a bank or trust company qualified to act as a fiduciary in this state, shall execute and file with the clerk a bond by a recognized surety company equal to such moneys and the annual income therefrom, plus the expected annual veterans administration benefit payments.

Sec. 15. Chapter six hundred thirty-three (633), division sixteen (XVI), Code 1975, is amended by adding the following new section:

NEW SECTION. WHEN POWER OF ATTORNEY NOT AFFECTED BY DISABILITY. Whenever a principal designates another his attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal", or "This power of attorney shall become effective upon the disability of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney in fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive

have the same effect and inure to the benefit of and bind the principal and his heirs, devisees and personal representatives as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal, and the conservator shall have the power to revoke the power of attorney on behalf of the principal.

Sec. 16. Chapter six hundred thirty-three (633), division sixteen (XVI), Code 1975, is amended by adding the following new section:

NEW SECTION. OTHER POWERS OF ATTORNEY NOT REVOKED UNTIL NOTICE OF DEATH OR DISABILITY.

1. The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section fifteen (15) of this Act, does not revoke or terminate the agency as to the attorney in fact, agent or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

2. An affidavit, executed by the attorney in fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney actual knowledge of the revocation or termination of the power of attorney, by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when properly acknowledged is likewise recordable.

3. This section shall not be construed to alter or affect any provision for revocation or termination contained in the

power of attorney.

Sec. 17. Sections six hundred thirty-three point six hundred sixteen (633.616), six hundred thirty-three point six hundred seventeen (633.617), six hundred thirty-three point six hundred eighteen (633.618), six hundred thirty-three point six hundred nineteen (633.619), six hundred thirty-three point six hundred twenty (633.620), and six hundred thirty-three point six hundred twenty-one (633.621), Code 1975, are repealed.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 541, Sixty-sixth General Assembly.

CLARK R. RASMUSSEN
Secretary of the Senate

Approved July 14, 1975

ROBERT D. RAY
Governor