

Reprinted

SENATE FILE 213

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 55)

Passed Senate, Date 3/26/91 (P. 877) Passed House, Date 4/15/91 (P. 1246)
Vote: Ayes 48 Nays 0 Vote: Ayes 99 Nays 0
Approved April 23, 1991

A BILL FOR

1 An Act relating to probate code provisions with respect to
2 testamentary trusts, investments by fiduciaries,
3 conservatorships, and the distribution of decedents' property
4 by affidavit.

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

6

SENATE FILE 213

S-3181

1 Amend Senate File 213 as follows:
2 1. Page 2, line 33, by inserting after the word
3 "instrument." the following: "In the absence of an
4 express provision to the contrary in the governing
5 instrument, a fiduciary shall not be deemed to have
6 breached the person's fiduciary duties for continuing
7 to hold property received into an account at the
8 account's inception or subsequently added to the
9 account or acquired pursuant to proper authority if
10 the fiduciary, in good faith and with reasonable
11 prudence, considers that retention is in the best
12 interest of the trust or estate or in furtherance of
13 the goals of the governing instrument."

By PAT DELUHERY
LINN FUHRMAN
AL STURGEON

S-3181 FILED MARCH 26, 1991
ADOPTED (P. 877)

22
23

1 Section 1. Section 633.10, subsection 4, Code 1991, is
2 amended to read as follows:

3 4. Trusts and trustees.

4 Except as otherwise provided in this subsection, the
5 appointment of trustees; the granting of letters of
6 trusteeship; the administration of testamentary trusts; the
7 administration of express trusts where jurisdiction is
8 specifically conferred on the court by the trust instrument;
9 the administration of express trusts where the administration
10 of the court is invoked by the trustee, beneficiary, or any
11 interested party; the administration of trusts which are
12 established by a decree of court and result in the
13 administration thereof by the court; and the settlement and
14 closing of all such trusts.

15 A trust which is administered solely or jointly by a bank
16 or trust company referred to in section 633.63, subsection 2,
17 is not subject to the jurisdiction of the court unless
18 jurisdiction is invoked by the trustee or beneficiary, or if
19 otherwise provided by the governing instrument. Upon
20 application by a bank or trust company administering a trust
21 which ~~is~~ was in existence on ~~the effective date of this Act~~
22 May 20, 1985, and is subject to the court's jurisdiction, and
23 following notice to the beneficiaries as provided in section
24 633.40, subsection 4, the court ~~may for good cause shown~~ shall
25 release the trust from further jurisdiction unless one or more
26 beneficiaries object, on the condition that jurisdiction may
27 be thereafter invoked by the trustee or beneficiary.

28 The provisions of unnumbered paragraph 2 shall be effective
29 for applications filed on or after July 1, 1991.

30 Sec. 2. NEW SECTION. 633.76A EXCEPTION -- VOTING OF
31 PUBLICLY TRADED SECURITIES.

32 Where there are two or more fiduciaries, a fiduciary may
33 delegate to another fiduciary the power to vote publicly
34 traded securities, unless the instrument creating the estate
35 provides to the contrary. The delegating fiduciary shall not

1 be personally liable for the manner in which such securities
2 are voted by the fiduciary to whom the power is delegated.

3 Sec. 3. Section 633.123, subsection 1, Code 1991, is
4 amended by striking the subsection and inserting in lieu
5 thereof the following:

6 1. INVESTMENTS BY FIDUCIARIES. When investing,
7 reinvesting, purchasing, acquiring, exchanging, selling, and
8 managing property for the benefit of another, a fiduciary
9 shall exercise the care, skill, prudence, and diligence under
10 the circumstances then prevailing that a prudent person acting
11 in a like capacity and familiar with such matters would use to
12 attain the purposes of the account. This standard requires
13 that when making investment decisions, a fiduciary shall
14 consider the role that the investment plays within the
15 account's portfolio of assets and may consider the general
16 economic conditions, the anticipated tax consequences of the
17 investment, the anticipated duration of the account, and the
18 needs of all beneficiaries of the account.

19 The propriety of an investment decision is to be determined
20 by what the fiduciary knew or should have known at the time of
21 the decision about the inherent nature and expected
22 performance of the investment, the attributes of the account
23 portfolio, the general economy, and the needs and objectives
24 of the beneficiaries of the account as they existed at the
25 time of the investment decision.

26 Sec. 4. Section 633.123, subsection 2, unnumbered
27 paragraph 1, Code 1991, is amended by striking the unnumbered
28 paragraph and inserting in lieu thereof the following:

29 ACTIONS PURSUANT TO GOVERNING INSTRUMENT. A fiduciary
30 acting under a governing instrument is not liable to anyone
31 whose interests arise from the instrument for the fiduciary's
32 good faith reliance on the express provisions of the
33 instrument.

34 Sec. 5. Section 633.175, Code 1991, is amended to read as
35 follows:

1 633.175 WAIVER OF BOND BY COURT.

2 The court may, for good cause shown, exempt any fiduciary
3 from giving bond, provided if the court finds that the
4 interests of creditors and distributees will not thereby be
5 prejudiced. However, the court shall not exempt a conservator
6 from giving bond in a conservatorship with total assets of
7 more than ten thousand dollars, excluding real property,
8 unless it is a voluntary conservatorship in which the
9 petitioner is eighteen years of age or older and has waived
10 bond in the petition.

11 Sec. 6. NEW SECTION. 633.356 DISTRIBUTION OF PROPERTY BY
12 AFFIDAVIT.

13 1. When the gross value of the decedent's personal
14 property does not exceed ten thousand dollars and there is no
15 real property or the real property passes to a surviving
16 spouse as joint tenant with right of survivorship, and if
17 forty days have elapsed since the death of the decedent, the
18 successor of the decedent as defined in subsection 2 may, by
19 filing an affidavit prepared pursuant to subsection 3, and
20 without procuring letters of appointment, do any of the
21 following with respect to one or more particular items of
22 personal property:

- 23 a. Receive any particular item of property that is
24 tangible personal property of the decedent.
- 25 b. Have any particular item of property that is evidence
26 of a debt, obligation, interest, right, security, or chose in
27 action belonging to the decedent transferred.
- 28 c. Collect the proceeds from any life insurance policy or
29 any other item of property for which a beneficiary has not
30 been designated.

31 2. "Successor of the decedent" means:

- 32 a. If the decedent died testate, the beneficiary or
33 beneficiaries who succeeded to the particular item of property
34 of the decedent under the decedent's will. For the purposes
35 of this subsection the trustee of a trust created during the

1 decedent's lifetime is a beneficiary under the decedent's will
2 if the trust succeeds to the particular item of property under
3 the decedent's will.

4 b. If the decedent died intestate, the person or persons
5 who succeeded to the particular item of property of the
6 decedent under the laws of intestate succession of this state.

7 3. To collect money, receive tangible personal property,
8 or have evidences of intangible personal property transferred
9 under this chapter, the successor of the decedent shall
10 furnish to the holder of the decedent's property an affidavit
11 under penalty of perjury stating all of the following:

12 a. The decedent's name and the date and place of the
13 decedent's death.

14 b. That at least forty days have elapsed since the death
15 of the decedent, as shown by an attached certified copy of the
16 death certificate of the decedent.

17 c. That the gross value of the decedent's personal
18 property does not exceed ten thousand dollars and there is no
19 real property or the real property passes to a surviving
20 spouse as joint tenant with right of survivorship.

21 d. A description of the property of the decedent that is
22 to be paid, transferred, or delivered to the successor.

23 e. The name, address, and social security number of the
24 successor of the decedent to the described property, and
25 whether the successor is under a legal disability.

26 f. If applicable, that attached copy of the decedent's
27 will is the last will of the decedent and has been admitted to
28 probate or otherwise filed in the office of a clerk of the
29 district court.

30 g. That no persons other than those listed in the
31 affidavit have a right to the interest of the decedent in the
32 described property.

33 h. That the affiant requests that the described property
34 be paid, delivered, or transferred to the successors of the
35 decedent to the described property.

1 i. That the affiant affirms under penalty of perjury that
2 the affidavit is true and correct.

3 More than one person may execute an affidavit under this
4 subsection.

5 4. If the decedent had evidence of ownership of the
6 property described in the affidavit and the holder of the
7 property would have the right to require presentation of the
8 evidence of ownership before the duty of the holder to pay,
9 deliver, or transfer the property to the decedent would have
10 arisen, the evidence of the ownership, if available, shall be
11 presented with the affidavit to the holder of the decedent's
12 property.

13 If the evidence of ownership is not presented to the holder
14 of the property, the holder may require, as a condition for
15 the payment, delivery, or transfer of the property, that the
16 successor provide the holder with a bond in a reasonable
17 amount determined by the holder to be sufficient to indemnify
18 the holder against all liability, claims, demands, loss,
19 damages, costs, and expenses that the holder may incur or
20 suffer by reason of the payment, delivery, or transfer of the
21 property. This subsection does not preclude the holder and
22 the successor from dispensing with the requirement that a bond
23 be provided, and instead entering into an agreement
24 satisfactory to the holder concerning the duty of the
25 successor to indemnify the holder.

26 Judgments rendered by any court in this state and mortgages
27 belonging to a decedent whose personal property is being
28 distributed pursuant to this section may, without prior order
29 of court, be released, discharged, or assigned, in whole or in
30 part, as to any particular property, and deeds may be executed
31 in performance of real estate contracts entered into by the
32 decedent, where an affidavit made pursuant to subsection 3 is
33 filed in the office of the county recorder of the county
34 wherein any judgment, mortgage, or real estate contract
35 appears of record.

1 5. Reasonable proof of the identity of each successor of
2 the decedent seeking distribution by virtue of the affidavit
3 shall be provided to the satisfaction of the holder of the
4 decedent's property.

5 6. If the requirements of this section are satisfied:

6 a. The property described in the affidavit shall be paid,
7 delivered, or transferred to the successor of the decedent's
8 interest in the property.

9 b. A transfer agent of a security described in the
10 affidavit shall change registered ownership on the books of
11 the corporation from the decedent to the person listed on the
12 affidavit as the successor of the decedent's interest.

13 If the holder of the decedent's property refuses to pay,
14 deliver, or transfer any property or evidence thereof to the
15 successor of the decedent within a reasonable time, the
16 successor may recover the property or compel its payment,
17 delivery, or transfer in an action brought for that purpose
18 against the holder of the property. If an action is brought
19 against the holder under this subsection, the court shall
20 award attorney's fees to the person bringing the action if the
21 court finds that the holder of the decedent's property acted
22 unreasonably in refusing to pay, deliver, or transfer the
23 property to the person as required by this subsection.

24 7. If the requirements of this section are satisfied,
25 receipt by the holder of the decedent's property of the
26 affidavit constitutes sufficient acquittance for the payment
27 of money, delivery of property, or transferring the registered
28 ownership of property pursuant to this chapter and discharges
29 the holder from any further liability with respect to the
30 money or property. The holder may rely in good faith on the
31 statements in the affidavit and has no duty to inquire into
32 the truth of any statement in the affidavit.

33 If the requirements of this section are satisfied, the
34 holder is not liable for any debt owed by the decedent by
35 reason of paying money, delivering property, or transferring

1 registered ownership of property pursuant to this chapter.
2 8. When a deceased distributee is entitled to money or
3 property claimed in an affidavit presented under this section
4 with respect to a deceased person whose estate is being
5 administered in this state, the personal representative of the
6 person whose estate is being administered shall present the
7 affidavit to the court in which the estate is being
8 administered. The court shall direct the personal
9 representative to pay the money or deliver the property to the
10 person identified by the affidavit as the successor of the
11 deceased distributee to the extent that the court determines
12 that the deceased distributee was entitled to the money or
13 property under the will or the laws of intestate succession.

14 9. The procedure provided by this section may be used only
15 if no administration of the decedent's estate is pending.

16 Sec. 7. Section 633.591, Code 1991, is amended to read as
17 follows:

18 633.591 VOLUNTARY PETITION FOR APPOINTMENT OF CONSERVATOR
19 -- STANDBY BASIS.

20 Any person of full age and sound mind may execute a
21 verified petition for the voluntary appointment of a
22 conservator of the person's property upon the express
23 condition that such petition shall be acted upon by the court
24 only upon the occurrence of an event specified or the
25 existence of a described condition of the mental or physical
26 health of the petitioner, the occurrence of which event, or
27 the existence of which condition, shall be established in the
28 manner directed in said the petition. The petition, if
29 executed on or after ~~July 1, 1989~~ January 1, 1991, shall
30 advise the proposed ward of a conservator's powers as provided
31 in section 633.576.

32 EXPLANATION

33 This bill provides that testamentary trusts with corporate
34 trustees or co-trustees will, upon application, be withdrawn
35 from court jurisdiction following notice to, and subject to

1 the objections of, the beneficiaries. This provision is
2 effective for applications filed on or after July 1, 1991.

3 The bill also amends the model prudent person investment
4 act to provide for evaluating investment decisions on the
5 basis of the performance of the entire account portfolio and
6 provides that a fiduciary is not liable for good faith
7 reliance on the terms of the instrument governing the
8 fiduciary.

9 The bill establishes mandatory surety bonds for
10 conservators of estates in excess of \$10,000 and changes the
11 date for certain disclosures in standby petitions for
12 guardianships and conservatorships to January 1, 1991, from
13 July 1, 1989.

14 In addition, the bill establishes a mechanism for
15 distributing \$10,000 or less from decedents' estates by
16 affidavit. This limits its application to those situations
17 where no Iowa inheritance tax is due.

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

1 Section 1. Section 633.10, subsection 4, Code 1991, is
2 amended to read as follows:

3 4. Trusts and trustees.

4 Except as otherwise provided in this subsection, the
5 appointment of trustees; the granting of letters of
6 trusteeship; the administration of testamentary trusts; the
7 administration of express trusts where jurisdiction is
8 specifically conferred on the court by the trust instrument;
9 the administration of express trusts where the administration
10 of the court is invoked by the trustee, beneficiary, or any
11 interested party; the administration of trusts which are
12 established by a decree of court and result in the
13 administration thereof by the court; and the settlement and
14 closing of all such trusts.

15 A trust which is administered solely or jointly by a bank
16 or trust company referred to in section 633.63, subsection 2,
17 is not subject to the jurisdiction of the court unless
18 jurisdiction is invoked by the trustee or beneficiary, or if
19 otherwise provided by the governing instrument. Upon
20 application by a bank or trust company administering a trust
21 which is was in existence on ~~the effective date of this Act~~
22 May 20, 1985, and is subject to the court's jurisdiction, and
23 following notice to the beneficiaries as provided in section
24 633.40, subsection 4, the court may-for-good-cause-shown shall
25 release the trust from further jurisdiction unless one or more
26 beneficiaries object, on the condition that jurisdiction may
27 be thereafter invoked by the trustee or beneficiary.

28 The provisions of unnumbered paragraph 2 shall be effective
29 for applications filed on or after July 1, 1991.

30 Sec. 2. NEW SECTION. 633.76A EXCEPTION -- VOTING OF
31 PUBLICLY TRADED SECURITIES.

32 Where there are two or more fiduciaries, a fiduciary may
33 delegate to another fiduciary the power to vote publicly
34 traded securities, unless the instrument creating the estate
35 provides to the contrary. The delegating fiduciary shall not

1 be personally liable for the manner in which such securities
2 are voted by the fiduciary to whom the power is delegated.

3 Sec. 3. Section 633.123, subsection 1, Code 1991, is
4 amended by striking the subsection and inserting in lieu
5 thereof the following:

6 1. INVESTMENTS BY FIDUCIARIES. When investing,
7 reinvesting, purchasing, acquiring, exchanging, selling, and
8 managing property for the benefit of another, a fiduciary
9 shall exercise the care, skill, prudence, and diligence under
10 the circumstances then prevailing that a prudent person acting
11 in a like capacity and familiar with such matters would use to
12 attain the purposes of the account. This standard requires
13 that when making investment decisions, a fiduciary shall
14 consider the role that the investment plays within the
15 account's portfolio of assets and may consider the general
16 economic conditions, the anticipated tax consequences of the
17 investment, the anticipated duration of the account, and the
18 needs of all beneficiaries of the account.

19 The propriety of an investment decision is to be determined
20 by what the fiduciary knew or should have known at the time of
21 the decision about the inherent nature and expected
22 performance of the investment, the attributes of the account
23 portfolio, the general economy, and the needs and objectives
24 of the beneficiaries of the account as they existed at the
25 time of the investment decision.

26 Sec. 4. Section 633.123, subsection 2, unnumbered
27 paragraph 1, Code 1991, is amended by striking the unnumbered
28 paragraph and inserting in lieu thereof the following:

29 ACTIONS PURSUANT TO GOVERNING INSTRUMENT. A fiduciary
30 acting under a governing instrument is not liable to anyone
31 whose interests arise from the instrument for the fiduciary's
32 good faith reliance on the express provisions of the
33 instrument. In the absence of an express provision to the
34 contrary in the governing instrument, a fiduciary shall not be
35 deemed to have breached the person's fiduciary duties for

1 continuing to hold property received into an account at the
2 account's inception or subsequently added to the account or
3 acquired pursuant to proper authority if the fiduciary, in
4 good faith and with reasonable prudence, considers that
5 retention is in the best interest of the trust or estate or in
6 furtherance of the goals of the governing instrument.

7 Sec. 5. Section 633.175, Code 1991, is amended to read as
8 follows:

9 633.175 WAIVER OF BOND BY COURT.

10 The court may, for good cause shown, exempt any fiduciary
11 from giving bond, provided if the court finds that the
12 interests of creditors and distributees will not thereby be
13 prejudiced. However, the court shall not exempt a conservator
14 from giving bond in a conservatorship with total assets of
15 more than ten thousand dollars, excluding real property,
16 unless it is a voluntary conservatorship in which the
17 petitioner is eighteen years of age or older and has waived
18 bond in the petition.

19 Sec. 6. NEW SECTION. 633.356 DISTRIBUTION OF PROPERTY BY
20 AFFIDAVIT.

21 1. When the gross value of the decedent's personal
22 property does not exceed ten thousand dollars and there is no
23 real property or the real property passes to a surviving
24 spouse as joint tenant with right of survivorship, and if
25 forty days have elapsed since the death of the decedent, the
26 successor of the decedent as defined in subsection 2 may, by
27 filing an affidavit prepared pursuant to subsection 3, and
28 without procuring letters of appointment, do any of the
29 following with respect to one or more particular items of
30 personal property:

31 a. Receive any particular item of property that is
32 tangible personal property of the decedent.

33 b. Have any particular item of property that is evidence
34 of a debt, obligation, interest, right, security, or chose in
35 action belonging to the decedent transferred.

1 c. Collect the proceeds from any life insurance policy or
2 any other item of property for which a beneficiary has not
3 been designated.

4 2. "Successor of the decedent" means:

5 a. If the decedent died testate, the beneficiary or
6 beneficiaries who succeeded to the particular item of property
7 of the decedent under the decedent's will. For the purposes
8 of this subsection the trustee of a trust created during the
9 decedent's lifetime is a beneficiary under the decedent's will
10 if the trust succeeds to the particular item of property under
11 the decedent's will.

12 b. If the decedent died intestate, the person or persons
13 who succeeded to the particular item of property of the
14 decedent under the laws of intestate succession of this state.

15 3. To collect money, receive tangible personal property,
16 or have evidences of intangible personal property transferred
17 under this chapter, the successor of the decedent shall
18 furnish to the holder of the decedent's property an affidavit
19 under penalty of perjury stating all of the following:

20 a. The decedent's name and the date and place of the
21 decedent's death.

22 b. That at least forty days have elapsed since the death
23 of the decedent, as shown by an attached certified copy of the
24 death certificate of the decedent.

25 c. That the gross value of the decedent's personal
26 property does not exceed ten thousand dollars and there is no
27 real property or the real property passes to a surviving
28 spouse as joint tenant with right of survivorship.

29 d. A description of the property of the decedent that is
30 to be paid, transferred, or delivered to the successor.

31 e. The name, address, and social security number of the
32 successor of the decedent to the described property, and
33 whether the successor is under a legal disability.

34 f. If applicable, that attached copy of the decedent's
35 will is the last will of the decedent and has been admitted to

1 probate or otherwise filed in the office of a clerk of the
2 district court.

3 g. That no persons other than those listed in the
4 affidavit have a right to the interest of the decedent in the
5 described property.

6 h. That the affiant requests that the described property
7 be paid, delivered, or transferred to the successors of the
8 decedent to the described property.

9 i. That the affiant affirms under penalty of perjury that
10 the affidavit is true and correct.

11 More than one person may execute an affidavit under this
12 subsection.

13 4. If the decedent had evidence of ownership of the
14 property described in the affidavit and the holder of the
15 property would have the right to require presentation of the
16 evidence of ownership before the duty of the holder to pay,
17 deliver, or transfer the property to the decedent would have
18 arisen, the evidence of the ownership, if available, shall be
19 presented with the affidavit to the holder of the decedent's
20 property.

21 If the evidence of ownership is not presented to the holder
22 of the property, the holder may require, as a condition for
23 the payment, delivery, or transfer of the property, that the
24 successor provide the holder with a bond in a reasonable
25 amount determined by the holder to be sufficient to indemnify
26 the holder against all liability, claims, demands, loss,
27 damages, costs, and expenses that the holder may incur or
28 suffer by reason of the payment, delivery, or transfer of the
29 property. This subsection does not preclude the holder and
30 the successor from dispensing with the requirement that a bond
31 be provided, and instead entering into an agreement
32 satisfactory to the holder concerning the duty of the
33 successor to indemnify the holder.

34 Judgments rendered by any court in this state and mortgages
35 belonging to a decedent whose personal property is being

1 distributed pursuant to this section may, without prior order
2 of court, be released, discharged, or assigned, in whole or in
3 part, as to any particular property, and deeds may be executed
4 in performance of real estate contracts entered into by the
5 decedent, where an affidavit made pursuant to subsection 3 is
6 filed in the office of the county recorder of the county
7 wherein any judgment, mortgage, or real estate contract
8 appears of record.

9 5. Reasonable proof of the identity of each successor of
10 the decedent seeking distribution by virtue of the affidavit
11 shall be provided to the satisfaction of the holder of the
12 decedent's property.

13 6. If the requirements of this section are satisfied:

14 a. The property described in the affidavit shall be paid,
15 delivered, or transferred to the successor of the decedent's
16 interest in the property.

17 b. A transfer agent of a security described in the
18 affidavit shall change registered ownership on the books of
19 the corporation from the decedent to the person listed on the
20 affidavit as the successor of the decedent's interest.

21 If the holder of the decedent's property refuses to pay,
22 deliver, or transfer any property or evidence thereof to the
23 successor of the decedent within a reasonable time, the
24 successor may recover the property or compel its payment,
25 delivery, or transfer in an action brought for that purpose
26 against the holder of the property. If an action is brought
27 against the holder under this subsection, the court shall
28 award attorney's fees to the person bringing the action if the
29 court finds that the holder of the decedent's property acted
30 unreasonably in refusing to pay, deliver, or transfer the
31 property to the person as required by this subsection.

32 7. If the requirements of this section are satisfied,
33 receipt by the holder of the decedent's property of the
34 affidavit constitutes sufficient acquittance for the payment
35 of money, delivery of property, or transferring the registered

1 ownership of property pursuant to this chapter and discharges
2 the holder from any further liability with respect to the
3 money or property. The holder may rely in good faith on the
4 statements in the affidavit and has no duty to inquire into
5 the truth of any statement in the affidavit.

6 If the requirements of this section are satisfied, the
7 holder is not liable for any debt owed by the decedent by
8 reason of paying money, delivering property, or transferring
9 registered ownership of property pursuant to this chapter.

10 8. When a deceased distributee is entitled to money or
11 property claimed in an affidavit presented under this section
12 with respect to a deceased person whose estate is being
13 administered in this state, the personal representative of the
14 person whose estate is being administered shall present the
15 affidavit to the court in which the estate is being
16 administered. The court shall direct the personal
17 representative to pay the money or deliver the property to the
18 person identified by the affidavit as the successor of the
19 deceased distributee to the extent that the court determines
20 that the deceased distributee was entitled to the money or
21 property under the will or the laws of intestate succession.

22 9. The procedure provided by this section may be used only
23 if no administration of the decedent's estate is pending.

24 Sec. 7. Section 633.591, Code 1991, is amended to read as
25 follows:

26 633.591 VOLUNTARY PETITION FOR APPOINTMENT OF CONSERVATOR
27 -- STANDBY BASIS.

28 Any person of full age and sound mind may execute a
29 verified petition for the voluntary appointment of a
30 conservator of the person's property upon the express
31 condition that such petition shall be acted upon by the court
32 only upon the occurrence of an event specified or the
33 existence of a described condition of the mental or physical
34 health of the petitioner, the occurrence of which event, or
35 the existence of which condition, shall be established in the

1 manner directed in said the petition. The petition, if
2 executed on or after ~~July-17-1989~~ January 1, 1991, shall
3 advise the proposed ward of a conservator's powers as provided
4 in section 633.576.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

STURGEON, CH.
VARN
FURMAN

SSB 55
JUDICIARY

SENATE FILE 213
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON STURGEON)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to probate code provisions with respect to
2 testamentary trusts, investments by fiduciaries,
3 conservatorships, and the distribution of decedents' property
4 by affidavit.

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

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 Section 1. Section 633.10, subsection 4, Code 1991, is
2 amended to read as follows:

3 4. Trusts and trustees.

4 Except as otherwise provided in this subsection, the
5 appointment of trustees; the granting of letters of
6 trusteeship; the administration of testamentary trusts; the
7 administration of express trusts where jurisdiction is
8 specifically conferred on the court by the trust instrument;
9 the administration of express trusts where the administration
10 of the court is invoked by the trustee, beneficiary, or any
11 interested party; the administration of trusts which are
12 established by a decree of court and result in the
13 administration thereof by the court; and the settlement and
14 closing of all such trusts.

15 A trust which is administered solely or jointly by a bank
16 or trust company referred to in section 633.63, subsection 2,
17 is not subject to the jurisdiction of the court unless
18 jurisdiction is invoked by the trustee or beneficiary, or if
19 otherwise provided by the governing instrument. Upon
20 application by a bank or trust company administering a trust
21 which ~~is~~ was in existence on ~~the effective date of this Act~~
22 May 20, 1985, and is subject to the court's jurisdiction, and
23 following notice to the beneficiaries as provided in section
24 633.40, the court ~~may-for-good-cause-shown~~ shall release the
25 trust from further jurisdiction unless one or more
26 beneficiaries object, on the condition that jurisdiction may
27 be thereafter invoked by the trustee or beneficiary.

28 The provisions of unnumbered paragraph 2 shall be effective
29 for applications filed on or after July 1, 1991.

30 Sec. 2. NEW SECTION. 633.76A EXCEPTION -- VOTING OF
31 PUBLICLY TRADED SECURITIES.

32 Where there are two or more fiduciaries, a fiduciary may
33 delegate to another fiduciary the power to vote publicly
34 traded securities, unless the instrument creating the estate
35 provides to the contrary. The delegating fiduciary shall not

1 be personally liable for the manner in which such securities
2 are voted by the fiduciary to whom the power is delegated.

3 Sec. 3. Section 633.123, subsection 1, Code 1991, is
4 amended by striking the subsection and inserting in lieu
5 thereof the following:

6 1. INVESTMENTS BY FIDUCIARIES. When investing,
7 reinvesting, purchasing, acquiring, exchanging, selling, and
8 managing property for the benefit of another, a fiduciary
9 shall exercise the care, skill, prudence, and diligence under
10 the circumstances then prevailing that a prudent person acting
11 in a like capacity and familiar with such matters would use to
12 attain the purposes of the account. This standard requires
13 that when making investment decisions, a fiduciary shall
14 consider the role that the investment plays within the
15 account's portfolio of assets and may consider the general
16 economic conditions, the anticipated tax consequences of the
17 investment, the anticipated duration of the account, and the
18 needs of all beneficiaries of the account.

19 The propriety of an investment decision is to be determined
20 by what the fiduciary knew or should have known at the time of
21 the decision about the inherent nature and expected
22 performance of the investment, the attributes of the account
23 portfolio, the general economy, and the needs and objectives
24 of the beneficiaries of the account as they existed at the
25 time of the investment decision.

26 Sec. 4. Section 633.123, subsection 2, unnumbered
27 paragraph 1, Code 1991, is amended by striking the unnumbered
28 paragraph and inserting in lieu thereof the following:

29 ACTIONS PURSUANT TO GOVERNING INSTRUMENT. A fiduciary
30 acting under a governing instrument is not liable to anyone
31 whose interests arise from the instrument for the fiduciary's
32 good faith reliance on the express provisions of the
33 instrument.

34 Sec. 5. Section 633.175, Code 1991, is amended to read as
35 follows:

1 633.175 WAIVER OF BOND BY COURT.

2 The court may, for good cause shown, exempt any fiduciary
3 from giving bond, provided if the court finds that the
4 interests of creditors and distributees will not thereby be
5 prejudiced. However, the court shall not exempt a conservator
6 from giving bond in a conservatorship with total assets of
7 more than ten thousand dollars, excluding real property,
8 unless it is a voluntary conservatorship in which the
9 petitioner is eighteen years of age or older and has waived
10 bond in the petition.

11 Sec. 6. NEW SECTION. 633.356 DISTRIBUTION OF PROPERTY BY
12 AFFIDAVIT.

13 1. When the gross value of the decedent's personal
14 property does not exceed ten thousand dollars and there is no
15 real property or the real property passes to a surviving
16 spouse as joint tenant with right of survivorship, and if
17 forty days have elapsed since the death of the decedent, the
18 successor of the decedent as defined in subsection 2 may, by
19 filing an affidavit prepared pursuant to subsection 3, and
20 without procuring letters of appointment, do any of the
21 following with respect to one or more particular items of
22 personal property:

23 a. Receive any particular item of property that is
24 tangible personal property of the decedent.

25 b. Have any particular item of property that is evidence
26 of a debt, obligation, interest, right, security, or chose in
27 action belonging to the decedent transferred.

28 c. Collect the proceeds from any life insurance policy or
29 any other item of property for which a beneficiary has not
30 been designated.

31 2. "Successor of the decedent" means:

32 a. If the decedent died testate, the beneficiary or
33 beneficiaries who succeeded to the particular item of property
34 of the decedent under the decedent's will. For the purposes
35 of this subsection the trustee of a trust created during the

1 decedent's lifetime is a beneficiary under the decedent's will
2 if the trust succeeds to the particular item of property under
3 the decedent's will.

4 b. If the decedent died intestate, the person or persons
5 who succeeded to the particular item of property of the
6 decedent under the laws of intestate succession of this state.

7 3. To collect money, receive tangible personal property,
8 or have evidences of intangible personal property transferred
9 under this chapter, the successor of the decedent shall
10 furnish to the holder of the decedent's property an affidavit
11 under penalty of perjury stating all of the following:

12 a. The decedent's name and the date and place of the
13 decedent's death.

14 b. That at least forty days have elapsed since the death
15 of the decedent, as shown by an attached certified copy of the
16 death certificate of the decedent.

17 c. That the gross value of the decedent's personal
18 property does not exceed ten thousand dollars and there is no
19 real property or the real property passes to a surviving
20 spouse as joint tenant with right of survivorship.

21 d. A description of the property of the decedent that is
22 to be paid, transferred, or delivered to the successor.

23 e. The name, address, and social security number of the
24 successor of the decedent to the described property, and
25 whether the successor is under a legal disability.

26 f. If applicable, that attached copy of the decedent's
27 will is the last will of the decedent and has been admitted to
28 probate or otherwise filed in the office of a clerk of the
29 district court.

30 g. That no persons other than those listed in the
31 affidavit have a right to the interest of the decedent in the
32 described property.

33 h. That the affiant requests that the described property
34 be paid, delivered, or transferred to the successors of the
35 decedent to the described property.

1 i. That the affiant affirms under penalty of perjury that
2 the affidavit is true and correct.

3 More than one person may execute an affidavit under this
4 subsection.

5 4. If the decedent had evidence of ownership of the
6 property described in the affidavit and the holder of the
7 property would have the right to require presentation of the
8 evidence of ownership before the duty of the holder to pay,
9 deliver, or transfer the property to the decedent would have
10 arisen, the evidence of the ownership, if available, shall be
11 presented with the affidavit to the holder of the decedent's
12 property.

13 If the evidence of ownership is not presented to the holder
14 of the property, the holder may require, as a condition for
15 the payment, delivery, or transfer of the property, that the
16 successor provide the holder with a bond in a reasonable
17 amount determined by the holder to be sufficient to indemnify
18 the holder against all liability, claims, demands, loss,
19 damages, costs, and expenses that the holder may incur or
20 suffer by reason of the payment, delivery, or transfer of the
21 property. This subsection does not preclude the holder and
22 the successor from dispensing with the requirement that a bond
23 be provided, and instead entering into an agreement
24 satisfactory to the holder concerning the duty of the
25 successor to indemnify the holder.

26 Judgments rendered by any court in this state and mortgages
27 belonging to a decedent whose personal property is being
28 distributed pursuant to this section may, without prior order
29 of court, be released, discharged, or assigned, in whole or in
30 part, as to any particular property, and deeds may be executed
31 in performance of real estate contracts entered into by the
32 decedent, where an affidavit made pursuant to subsection 3 is
33 filed in the office of the county recorder of the county
34 wherein any judgment, mortgage, or real estate contract
35 appears of record.

1 5. Reasonable proof of the identity of each successor of
2 the decedent seeking distribution by virtue of the affidavit
3 shall be provided to the satisfaction of the holder of the
4 decedent's property.

5 6. If the requirements of this section are satisfied:

6 a. The property described in the affidavit shall be paid,
7 delivered, or transferred to the successor of the decedent's
8 interest in the property.

9 b. A transfer agent of a security described in the
10 affidavit shall change registered ownership on the books of
11 the corporation from the decedent to the person listed on the
12 affidavit as the successor of the decedent's interest.

13 If the holder of the decedent's property refuses to pay,
14 deliver, or transfer any property or evidence thereof to the
15 successor of the decedent within a reasonable time, the
16 successor may recover the property or compel its payment,
17 delivery, or transfer in an action brought for that purpose
18 against the holder of the property. If an action is brought
19 against the holder under this subsection, the court shall
20 award attorney's fees to the person bringing the action if the
21 court finds that the holder of the decedent's property acted
22 unreasonably in refusing to pay, deliver, or transfer the
23 property to the person as required by this subsection.

24 7. If the requirements of this section are satisfied,
25 receipt by the holder of the decedent's property of the
26 affidavit constitutes sufficient acquittance for the payment
27 of money, delivery or property, or transferring the registered
28 ownership of property pursuant to this chapter and discharges
29 the holder from any further liability with respect to the
30 money or property. The holder may rely in good faith on the
31 statements in the affidavit and has no duty to inquire into
32 the truth of any statement in the affidavit.

33 If the requirements of this section are satisfied, the
34 holder is not liable for any debt owned by the decedent by
35 reason of paying money, delivering property, or transferring

1 registered ownership of property pursuant to this chapter.
2 8. When a deceased distributee is entitled to money or
3 property claimed in an affidavit presented under this section
4 with respect to a deceased person whose estate is being
5 administered in this state, the personal representative of the
6 person whose estate is being administered shall present the
7 affidavit to the court in which the estate is being
8 administered. The court shall direct the personal
9 representative to pay the money or deliver the property to the
10 person identified by the affidavit as the successor of the
11 deceased distributee to the extent that the court determines
12 that the deceased distributee was entitled to the money or
13 property under the will or the laws of intestate succession.

14 9. The procedure provided by this section may be used only
15 if no administration of the decedent's estate is pending.

16 Sec. 7. Section 633.591, Code 1991, is amended to read as
17 follows:

18 633.591 VOLUNTARY PETITION FOR APPOINTMENT OF CONSERVATOR
19 -- STANDBY BASIS.

20 Any person of full age and sound mind may execute a
21 verified petition for the voluntary appointment of a
22 conservator of the person's property upon the express
23 condition that such petition shall be acted upon by the court
24 only upon the occurrence of an event specified or the
25 existence of a described condition of the mental or physical
26 health of the petitioner, the occurrence of which event, or
27 the existence of which condition, shall be established in the
28 manner directed in said the petition. The petition, if
29 executed on or after ~~July 17, 1989~~ January 1, 1991, shall
30 advise the proposed ward of a conservator's powers as provided
31 in section 633.576.

32 EXPLANATION

33 This bill provides that testamentary trusts with corporate
34 trustees or co-trustees will, upon application, be withdrawn
35 from court jurisdiction following notice to, and subject to

1 the objections of, the beneficiaries. This provision is
2 effective for applications filed on or after July 1, 1991.

3 The bill also amends the model prudent person investment
4 act to provide for evaluating investment decisions on the
5 basis of the performance of the entire account portfolio and
6 provides that a fiduciary is not liable for good faith
7 reliance on the terms of the instrument governing the
8 fiduciary.

9 The bill establishes mandatory surety bonds for
10 conservators of estates in excess of \$10,000 and changes the
11 date for certain disclosures in standby petitions for
12 guardianships and conservatorships to January 1, 1991, from
13 July 1, 1989.

14 In addition, the bill establishes a mechanism for
15 distributing \$10,000 or less from decedents' estates by
16 affidavit. This limits its application to those situations
17 where no Iowa inheritance tax is due.

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SENATE FILE 213

AN ACT

RELATING TO PROBATE CODE PROVISIONS WITH RESPECT TO
TESTAMENTARY TRUSTS, INVESTMENTS BY FIDUCIARIES,
CONSERVATORSHIPS, AND THE DISTRIBUTION OF DECEDENTS'
PROPERTY BY AFFIDAVIT.

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

Section 1. Section 633.10, subsection 4, Code 1991, is amended to read as follows:

4. Trusts and trustees.

Except as otherwise provided in this subsection, the appointment of trustees; the granting of letters of trusteeship; the administration of testamentary trusts; the administration of express trusts where jurisdiction is specifically conferred on the court by the trust instrument; the administration of express trusts where the administration of the court is invoked by the trustee, beneficiary, or any interested party; the administration of trusts which are established by a decree of court and result in the administration thereof by the court; and the settlement and closing of all such trusts.

A trust which is administered solely or jointly by a bank or trust company referred to in section 633.63, subsection 2, is not subject to the jurisdiction of the court unless jurisdiction is invoked by the trustee or beneficiary, or if otherwise provided by the governing instrument. Upon application by a bank or trust company administering a trust which is was in existence on ~~the effective date of this Act~~ May 20, 1985, and is subject to the court's jurisdiction, and following notice to the beneficiaries as provided in section 633.40, subsection 4, the court ~~may for good cause shown~~ shall release the trust from further jurisdiction unless one or more beneficiaries object, on the condition that jurisdiction may be thereafter invoked by the trustee or beneficiary.

The provisions of unnumbered paragraph 2 shall be effective for applications filed on or after July 1, 1991.

Sec. 2. NEW SECTION. 633.76A EXCEPTION -- VOTING OF PUBLICLY TRADED SECURITIES.

Where there are two or more fiduciaries, a fiduciary may delegate to another fiduciary the power to vote publicly traded securities, unless the instrument creating the estate provides to the contrary. The delegating fiduciary shall not be personally liable for the manner in which such securities are voted by the fiduciary to whom the power is delegated.

Sec. 3. Section 633.123, subsection 1, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

1. INVESTMENTS BY FIDUCIARIES. When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property for the benefit of another, a fiduciary shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account. This standard requires

that when making investment decisions, a fiduciary shall consider the role that the investment plays within the account's portfolio of assets and may consider the general economic conditions, the anticipated tax consequences of the investment, the anticipated duration of the account, and the needs of all beneficiaries of the account.

The propriety of an investment decision is to be determined by what the fiduciary knew or should have known at the time of the decision about the inherent nature and expected performance of the investment, the attributes of the account portfolio, the general economy, and the needs and objectives of the beneficiaries of the account as they existed at the time of the investment decision.

Sec. 4. Section 633.123, subsection 2, unnumbered paragraph 1, Code 1991, is amended by striking the unnumbered paragraph and inserting in lieu thereof the following:

ACTIONS PURSUANT TO GOVERNING INSTRUMENT. A fiduciary acting under a governing instrument is not liable to anyone whose interests arise from the instrument for the fiduciary's good faith reliance on the express provisions of the instrument. In the absence of an express provision to the contrary in the governing instrument, a fiduciary shall not be deemed to have breached the person's fiduciary duties for continuing to hold property received into an account at the account's inception or subsequently added to the account or acquired pursuant to proper authority if the fiduciary, in good faith and with reasonable prudence, considers that retention is in the best interest of the trust or estate or in furtherance of the goals of the governing instrument.

Sec. 5. Section 633.175, Code 1991, is amended to read as follows:

633.175 WAIVER OF BOND BY COURT.

The court may, for good cause shown, exempt any fiduciary from giving bond, provided if the court finds that the interests of creditors and distributees will not thereby be prejudiced. However, the court shall not exempt a conservator from giving bond in a conservatorship with total assets of more than ten thousand dollars, excluding real property, unless it is a voluntary conservatorship in which the petitioner is eighteen years of age or older and has waived bond in the petition.

Sec. 6. **NEW SECTION.** 633.356 DISTRIBUTION OF PROPERTY BY AFFIDAVIT.

1. When the gross value of the decedent's personal property does not exceed ten thousand dollars and there is no real property or the real property passes to a surviving spouse as joint tenant with right of survivorship, and if forty days have elapsed since the death of the decedent, the successor of the decedent as defined in subsection 2 may, by filing an affidavit prepared pursuant to subsection 3, and without procuring letters of appointment, do any of the following with respect to one or more particular items of personal property:

- a. Receive any particular item of property that is tangible personal property of the decedent.
- b. Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred.
- c. Collect the proceeds from any life insurance policy or any other item of property for which a beneficiary has not been designated.

2. "Successor of the decedent" means:

- a. If the decedent died testate, the beneficiary or beneficiaries who succeeded to the particular item of property of the decedent under the decedent's will. For the purposes

of this subsection the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.

b. If the decedent died intestate, the person or persons who succeeded to the particular item of property of the decedent under the laws of intestate succession of this state.

3. To collect money, receive tangible personal property, or have evidences of intangible personal property transferred under this chapter, the successor of the decedent shall furnish to the holder of the decedent's property an affidavit under penalty of perjury stating all of the following:

a. The decedent's name and the date and place of the decedent's death.

b. That at least forty days have elapsed since the death of the decedent, as shown by an attached certified copy of the death certificate of the decedent.

c. That the gross value of the decedent's personal property does not exceed ten thousand dollars and there is no real property or the real property passes to a surviving spouse as joint tenant with right of survivorship.

d. A description of the property of the decedent that is to be paid, transferred, or delivered to the successor.

e. The name, address, and social security number of the successor of the decedent to the described property, and whether the successor is under a legal disability.

f. If applicable, that attached copy of the decedent's will is the last will of the decedent and has been admitted to probate or otherwise filed in the office of a clerk of the district court.

g. That no persons other than those listed in the affidavit have a right to the interest of the decedent in the described property.

h. That the affiant requests that the described property be paid, delivered, or transferred to the successors of the decedent to the described property.

i. That the affiant affirms under penalty of perjury that the affidavit is true and correct.

More than one person may execute an affidavit under this subsection.

4. If the decedent had evidence of ownership of the property described in the affidavit and the holder of the property would have the right to require presentation of the evidence of ownership before the duty of the holder to pay, deliver, or transfer the property to the decedent would have arisen, the evidence of the ownership, if available, shall be presented with the affidavit to the holder of the decedent's property.

If the evidence of ownership is not presented to the holder of the property, the holder may require, as a condition for the payment, delivery, or transfer of the property, that the successor provide the holder with a bond in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery, or transfer of the property. This subsection does not preclude the holder and the successor from dispensing with the requirement that a bond be provided, and instead entering into an agreement satisfactory to the holder concerning the duty of the successor to indemnify the holder.

Judgments rendered by any court in this state and mortgages belonging to a decedent whose personal property is being distributed pursuant to this section may, without prior order of court, be released, discharged, or assigned, in whole or in part, as to any particular property, and deeds may be executed

in performance of real estate contracts entered into by the decedent, where an affidavit made pursuant to subsection 3 is filed in the office of the county recorder of the county wherein any judgment, mortgage, or real estate contract appears of record.

5. Reasonable proof of the identity of each successor of the decedent seeking distribution by virtue of the affidavit shall be provided to the satisfaction of the holder of the decedent's property.

6. If the requirements of this section are satisfied:

a. The property described in the affidavit shall be paid, delivered, or transferred to the successor of the decedent's interest in the property.

b. A transfer agent of a security described in the affidavit shall change registered ownership on the books of the corporation from the decedent to the person listed on the affidavit as the successor of the decedent's interest.

If the holder of the decedent's property refuses to pay, deliver, or transfer any property or evidence thereof to the successor of the decedent within a reasonable time, the successor may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this subsection, the court shall award attorney's fees to the person bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to the person as required by this subsection.

7. If the requirements of this section are satisfied, receipt by the holder of the decedent's property of the affidavit constitutes sufficient acquittance for the payment of money, delivery of property, or transferring the registered ownership of property pursuant to this chapter and discharges

the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any statement in the affidavit.

If the requirements of this section are satisfied, the holder is not liable for any debt owed by the decedent by reason of paying money, delivering property, or transferring registered ownership of property pursuant to this chapter.

8. When a deceased distributee is entitled to money or property claimed in an affidavit presented under this section with respect to a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person identified by the affidavit as the successor of the deceased distributee to the extent that the court determines that the deceased distributee was entitled to the money or property under the will or the laws of intestate succession.

9. The procedure provided by this section may be used only if no administration of the decedent's estate is pending.

Sec. 7. Section 633.591, Code 1991, is amended to read as follows:

633.591 VOLUNTARY PETITION FOR APPOINTMENT OF CONSERVATOR
-- STANDBY BASIS.

Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of the person's property upon the express condition that such petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or

the existence of which condition, shall be established in the manner directed in said the petition. The petition, if executed on or after ~~July 17, 1989~~ January 1, 1991, shall advise the proposed ward of a conservator's powers as provided in section 633.576.

JOE J. WELSH
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 213, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 23, 1991

TERRY E. BRANSTAD
Governor