

3/26/97 Motion to R/C Barty + Black  
3/31/97 motion to R/C by Barty adopted  
FILED FEB 27 1997

REPRINTED

SENATE FILE 241  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 9)

Passed Senate, Date 3/26/97 (p. 804) Passed House, Date 4-16-97 (P. 1295)

Vote: Ayes 29 Nays 18 Vote: Ayes 94 Nays 2

(P. 862) Passed Approved May 26, 1997  
Vote 47-0 3-31-97

A BILL FOR

1 An Act adopting the uniform transfer on death security  
2 registration Act.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 241

1 Section 1. Section 633.10, Code 1997, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 5. ACTIONS FOR ACCOUNTING.

4 An action for an accounting against a beneficiary of a  
5 transfer on death security registration, pursuant to this  
6 chapter.

7 Sec. 2. NEW SECTION. 633.800 SHORT TITLE -- RULES OF  
8 CONSTRUCTION.

9 1. This division shall be known and may be cited as the  
10 uniform transfer on death security registration Act.

11 2. The provisions of this division shall be liberally  
12 construed and applied to promote its underlying purposes and  
13 policy and to make uniform the laws with respect to the  
14 subject of its provisions among states enacting this uniform  
15 Act.

16 3. Unless displaced by the particular provisions of this  
17 division, the principles of law and equity supplement the  
18 provisions of this division.

19 Sec. 3. NEW SECTION. 633.801 DEFINITIONS.

20 As used in this division, unless the context otherwise  
21 requires:

22 1. "Beneficiary form" means a registration of a security  
23 which indicates the present owner of the security and the  
24 intention of the owner regarding the person who will become  
25 the owner of the security upon the death of the owner.

26 2. "Devisee" means any person designated in a will to  
27 receive a disposition of real or personal property.

28 3. "Heir" means a person, including the surviving spouse,  
29 who is entitled under the statutes of intestate succession to  
30 the property of a decedent.

31 4. "Register" means to issue a certificate showing the  
32 ownership of a certificated security or, in the case of an  
33 uncertificated security, to initiate or transfer an account  
34 showing ownership of the security.

35 5. "Registering entity" means a person who originates or

1 transfers a security title by registration, including a broker  
2 maintaining security accounts for customers and a transfer  
3 agent or other person acting for or as an issuer of  
4 securities.

5 6. "Security" means a security as defined in section  
6 502.102.

7 7. "Security account" means either of the following:

8 a. Any of the following:

9 (1) A reinvestment account associated with a security.

10 (2) A securities account with a broker.

11 (3) A cash balance in a brokerage account.

12 (4) Cash, interest, earnings, or dividends earned or  
13 declared on a security in an account, a reinvestment account,  
14 or a brokerage account, whether or not credited to the account  
15 before the owner's death.

16 b. A cash balance or other property held for or due to the  
17 owner of a security as a replacement for or product of an  
18 account security, whether or not credited to the account  
19 before the owner's death.

20 8. "State" includes any state of the United States, the  
21 District of Columbia, the Commonwealth of Puerto Rico, and any  
22 territory or possession subject to the legislative authority  
23 of the United States.

24 Sec. 4. NEW SECTION. 633.802 REGISTRATION IN BENEFICIARY  
25 FORM -- SOLE OR JOINT TENANCY OWNERSHIP.

26 Only an individual whose registration of a security shows  
27 sole ownership by one individual or multiple ownership by two  
28 or more individuals with a right of survivorship, rather than  
29 as tenants in common, may obtain registration in beneficiary  
30 form. Multiple owners of a security registered in beneficiary  
31 form shall hold as joint tenants with rights of survivorship,  
32 tenants by the entireties, or owners of community property  
33 held in survivorship form and not as tenants in common.

34 Sec. 5. NEW SECTION. 633.803 REGISTRATION IN BENEFICIARY  
35 FORM -- APPLICABLE LAW.

1 1. A security may be registered in beneficiary form if the  
2 form is authorized by this division or a similar statute of  
3 the state of any of the following:

4 a. The state of organization of the issuer or registering  
5 entity.

6 b. The state of location of the registering entity's  
7 principal office.

8 c. The state of location of the office of the entity's  
9 transfer agent or the office of the entity making the  
10 registration.

11 d. The state of the address listed as the owner's at the  
12 time of registration.

13 2. A registration governed by the law of a jurisdiction in  
14 which this division or a similar statute is not in force or  
15 was not in force when a registration in beneficiary form was  
16 made is presumed to be valid and authorized as a matter of  
17 contract law.

18 Sec. 6. NEW SECTION. 633.804 ORIGINATION OF REGISTRATION  
19 IN BENEFICIARY FORM.

20 A security, whether evidenced by a certificate or account,  
21 is registered in beneficiary form when the registration  
22 includes a designation of a beneficiary to take the ownership  
23 at the death of the owner or the deaths of all multiple  
24 owners.

25 Sec. 7. NEW SECTION. 633.805 FORM OF REGISTRATION IN  
26 BENEFICIARY FORM.

27 Registration in beneficiary form may be shown by any of the  
28 following, appearing after the name of the registered owner  
29 and before the name of a beneficiary:

30 1. The words "transfer on death" or the abbreviation  
31 "TOD".

32 2. The words "pay on death" or the abbreviation "POD".

33 Sec. 8. NEW SECTION. 633.806 EFFECT OF REGISTRATION IN  
34 BENEFICIARY FORM.

35 The designation of a transfer on death or pay on death

1 beneficiary on a registration in beneficiary form has no  
2 effect on ownership until the owner's death. A registration  
3 of a security in beneficiary form may be canceled or changed  
4 at any time by the sole owner or all surviving owners without  
5 the consent of the beneficiary.

6 Sec. 9. NEW SECTION. 633.807 UNPAID CLAIMS.

7 1. If other assets of the estate of a deceased owner are  
8 insufficient to pay debts, taxes, and expenses of  
9 administration, including statutory allowances to the  
10 surviving spouse and children, a transfer at death of a  
11 security registered in beneficiary form is not effective  
12 against the estate of the deceased sole owner, or if multiple  
13 owners, against the estate of the last owner to die, to the  
14 extent needed to pay debts, taxes, and expenses of  
15 administration, including statutory allowances to the  
16 surviving spouse and children.

17 2. A beneficiary of a transfer on death security  
18 registration under this division is liable to account to the  
19 personal representative of the deceased owner for the value of  
20 the security as of the time of the deceased owner's death to  
21 the extent necessary to discharge debts, taxes, and expenses  
22 of administration, including statutory allowances to the  
23 surviving spouse and children. A proceeding against a  
24 beneficiary to assert liability shall not be commenced unless  
25 the personal representative has received a written demand by  
26 the surviving spouse, a creditor, a child, or a person acting  
27 for a minor child of the deceased owner.

28 3. An action for an accounting under this section must be  
29 commenced within two years after the death of the owner.

30 4. A beneficiary against whom a proceeding is brought may  
31 elect to transfer to the personal representative the security  
32 registered in the name of the beneficiary if the beneficiary  
33 still owns the security, or the net proceeds received by the  
34 beneficiary upon disposition of the security by the  
35 beneficiary. Such transfer fully discharges the beneficiary

1 from all liability under this section.

2 5. A beneficiary against whom a proceeding for an  
3 accounting is brought may join as a party to the proceeding a  
4 beneficiary of any other security registered in beneficiary  
5 form by the deceased owner.

6 6. Amounts recovered by the personal representative with  
7 respect to a security shall be administered as part of the  
8 deceased owner's estate.

9 Sec. 10. NEW SECTION. 633.808 DEATH OF THE OWNER.

10 On the death of a sole owner or on the death of the sole  
11 surviving owner of multiple owners, the ownership of  
12 securities registered in beneficiary form passes to the  
13 beneficiary or beneficiaries who survive all owners. On proof  
14 of death of all owners and compliance with any applicable  
15 requirements of the registering entity, a security registered  
16 in beneficiary form may be reregistered in the name of the  
17 beneficiary or beneficiaries who survived the death of all  
18 owners. A registering entity shall provide notice to the  
19 department of revenue and finance of all reregistrations made  
20 pursuant to this division. The notice shall include the name,  
21 address, and social security number of the decedent and all  
22 transferees. Until the division of the security after the  
23 death of all owners, multiple beneficiaries surviving the  
24 death of all owners hold their interests as tenants in common.  
25 If no beneficiary survives the death of all owners, the  
26 security belongs to the estate of the deceased sole owner or  
27 the estate of the last to die of multiple owners.

28 Sec. 11. NEW SECTION. 633.809 PROTECTION OF REGISTERING  
29 ENTITY.

30 1. A registering entity is not required to offer or to  
31 accept a request for security registration in beneficiary  
32 form. If a registration in beneficiary form is offered by a  
33 registering entity, the owner requesting registration in  
34 beneficiary form assents to the protections provided to the  
35 registering entity by this division.

1 2. By accepting a request for registration of a security  
2 in beneficiary form, the registering entity agrees that the  
3 registration in beneficiary form shall be implemented on the  
4 death of the deceased owners as provided in this division.

5 3. A registering entity is discharged from all claims to a  
6 security by the estate, creditors, heirs, or devisees of a  
7 deceased owner if the registering entity registers a transfer  
8 of the security in accordance with section 633.808 and does so  
9 in good faith reliance on all of the following:

- 10 a. The registration.
- 11 b. The provisions of this division.
- 12 c. Information provided by affidavit of the personal  
13 representative of the deceased owner, the surviving  
14 beneficiary, or the surviving beneficiary's representative, or  
15 other information available to the registering entity.

16 The protections of this division do not extend to a  
17 reregistration or payment made after a registering entity has  
18 received written notice from any claimant to any interest in  
19 the security objecting to implementation of a registration in  
20 beneficiary form. No other notice or other information  
21 available to the registering entity affects its right to  
22 protection under this division.

23 4. The protection provided by this division to the  
24 registering entity of a security does not affect the rights of  
25 beneficiaries in disputes between themselves and other  
26 claimants to ownership of the transferred security, its value,  
27 or its proceeds.

28 Sec. 12. NEW SECTION. 633.810 NONTESTAMENTARY TRANSFER  
29 ON DEATH.

30 1. A transfer on death resulting from a registration in  
31 beneficiary form shall be effective by reason of the contract  
32 regarding the registration between the owner and the  
33 registering entity under the provisions of this division, and  
34 is not testamentary.

35 2. The provisions of this division do not limit the rights

1 of creditors or security owners against beneficiaries and  
2 other transferees under other laws of this state.

3 Sec. 13. NEW SECTION. 633.811 TERMS, CONDITIONS, AND  
4 FORMS FOR REGISTRATION.

5 1. A registering entity offering to accept registrations  
6 in beneficiary form may establish the terms and conditions  
7 under which the registering entity receives requests for  
8 either of the following:

9 a. Registration in beneficiary form.

10 b. Implementation of registrations in beneficiary form,  
11 including requests for cancellation of previously registered  
12 transfer on death or pay on death beneficiary designations and  
13 requests for reregistration to effect a change of beneficiary.

14 2. a. The terms and conditions established by the  
15 registering entity may provide for proving death, avoiding or  
16 resolving problems concerning fractional shares, designating  
17 primary and contingent beneficiaries, and substituting a named  
18 beneficiary's descendants to take in place of the named  
19 beneficiary in the event of the beneficiary's death.

20 Substitution may be indicated by appending to the name of the  
21 beneficiary the letters "LDPS" standing for "lineal  
22 descendants per stirpes". This designation shall substitute a  
23 deceased beneficiary's descendants who survive the owner for a  
24 beneficiary who fails to survive, with the descendants to be  
25 identified and to share in accordance with the law of the  
26 beneficiary's domicile at the owner's death governing  
27 inheritance by descendants of an intestate. Other forms of  
28 identifying beneficiaries who are to take on one or more  
29 contingencies, and rules for providing proofs and assurances  
30 needed to satisfy reasonable concerns by registering entities  
31 regarding conditions and identities relevant to accurate  
32 implementation of registrations in beneficiary form, may be  
33 contained in a registering entity's terms and conditions.

34 b. The following are illustrations of registrations in  
35 beneficiary form which a registering entity may authorize:

1 (1) Sole owner-sole beneficiary: OWNER'S NAME transfer on  
2 death (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

3 (2) Multiple owners-sole beneficiary: OWNERS' NAMES, as  
4 joint tenants or tenants in the entirety, transfer on death  
5 (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

6 (3) Multiple owners-primary and secondary (substituted)  
7 beneficiaries: OWNERS' NAMES as joint tenants or tenants in  
8 the entirety, transfer on death (TOD) or pay on death (POD) to  
9 BENEFICIARY'S NAME, or lineal descendants per stirpes.

10 Sec. 14. APPLICATION. The provisions of this division  
11 apply to registrations of securities in beneficiary form made  
12 before, on, or after the effective date of this Act, by  
13 decedents dying on or after the effective date of this Act.

14 EXPLANATION

15 This bill adopts the uniform transfer on death (TOD)  
16 security registration Act as approved and recommended by the  
17 national conference of commissioners on uniform state laws at  
18 its annual conference on July 28 - August 4, 1989. The bill  
19 allows the owner of securities to register the title in  
20 "transfer-on-death" (TOD) form. The bill provides that a  
21 person (e.g., an issuer or broker) may transfer the securities  
22 directly to the designated transferee on the owner's death,  
23 passing outside the probate process. The registration  
24 provides a nonprobate transfer option without providing for  
25 joint tenancy form of title. The registration form does not  
26 affect the registered owner's control of the affected security  
27 during the lifetime of the owner. The bill provides for the  
28 right of survivorship by registered owners and the rights of  
29 beneficiaries to take the asset upon the death of the last  
30 surviving owner. An issuer is not required to implement the  
31 procedure, and the bill provides protections to the  
32 registering entity who acts in good faith. The bill provides  
33 jurisdiction to district court to hear actions for an  
34 accounting against a beneficiary of a transfer a death  
35 security registration.

1 Specifically, the bill includes the following new Code  
2 sections:

3 Section 633.800 provides for citation of the Act as the  
4 Uniform Transfer on Death Security Registration Act and for  
5 liberal construction of the Act to achieve uniformity among  
6 states enacting this Act.

7 Section 633.801 provides definitions of relevant terms used  
8 in TOD registration including "beneficiary form", "heir",  
9 "register", "registering entity", "security", "security  
10 account", and "state".

11 Terms such as "beneficiary form", "register", "registering  
12 entity", "security", and "security account" are new terms to  
13 the probate code and relate to securities products generally  
14 and the companies that sell them. The term "security" is  
15 defined similarly to the term defined in the Uniform  
16 Commercial Code (chapter 554) and is similar to section  
17 554.8102. The bill defines the term "heir" differently than  
18 provided in the probate code, to include a surviving spouse.

19 Section 633.802 provides that a sole owner or multiple  
20 owners of a security held in survivorship form may elect to  
21 register their ownership in beneficiary form. This  
22 registration is not available to persons holding as tenants in  
23 common.

24 Section 633.803 provides circumstances which must exist  
25 before a security may be registered in beneficiary form and  
26 recognized under the bill's provisions. Further, the bill  
27 provides general rights under Iowa contract law for Iowa  
28 residents who elect beneficiary form registration of products  
29 issued from or held in states that have not adopted the  
30 Uniform Transfer on Death Security Registration Act.

31 Section 633.804 defines how registration in beneficiary  
32 form takes place.

33 Section 633.805 adopts certain words and abbreviations  
34 which will show registration in beneficiary form. These are  
35 "transfer on death", "TOD", "pay on death", and "POD".

1 Section 633.806 explains that a designation of a "TOD" or  
2 "POD" beneficiary has no effect until death of the owner or  
3 the death of the last multiple owner and can be changed  
4 without consent of the beneficiary.

5 Section 633.807 provides for the payment of unpaid claims.

6 Section 633.808 provides that on proof of death and  
7 compliance with any requirements of the registering entity,  
8 the security may be reregistered in the name of the designated  
9 beneficiary. The bill requires the registering entity to  
10 provide notice of reregistrations to the department of revenue  
11 and finance. On the death of the owner, multiple  
12 beneficiaries will hold as tenants in common. The bill also  
13 provides guidelines for circumstances when no beneficiary  
14 survives.

15 Section 633.809 provides that a registering entity which  
16 elects to provide registration of securities in beneficiary  
17 form agrees to the conditions of this division. The  
18 registering entity is discharged from other claims to the  
19 security if it acts in good faith reliance on the registration  
20 and information provided by affidavit. The section provides  
21 that it does not provide protection to a registering entity  
22 which reregisters or distributes a security after receiving  
23 written notice of an objection to registration in beneficiary  
24 form. The bill does not attempt to regulate the rights or  
25 claims of beneficiaries in disputes among themselves.

26 Section 633.810 provides that transfers made under the  
27 bill's provisions are not testamentary and do not limit the  
28 rights of creditors against beneficiaries.

29 Section 633.811 provides that the registering entity may  
30 define the precise forms and conditions for registration in  
31 beneficiary form. This includes examples of recommended  
32 registrations to be used by registering entities to resolve  
33 questions regarding fractional shares.

34 Section 13 of the bill provides for application of the  
35 provisions of the bill to registrations of securities in

1 beneficiary form which predate or postdate adoption of the  
2 bill for decedents dying on or after the effective date of the  
3 bill.

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SENATE FILE 241

S-3219

- 1 Amend Senate File 241 as follows:  
2 1. Page 5, by inserting after line 8 the  
3 following:  
4 "\_\_\_\_. In an action for an accounting brought under  
5 this section, where the deceased owner was domiciled  
6 in this state, the laws of this state shall apply."  
7 2. By renumbering as necessary.

By MERLIN E. BARTZ

S-3219 FILED MARCH 25, 1997

*Adopted 3/26/97 (p. 805)*

SENATE FILE 241

S-3223

- 1 Amend Senate File 241 as follows:  
2 1. Page 4, line 6, by striking the words "UNPAID  
3 CLAIMS" and inserting the following: "CLAIMS AGAINST  
4 A BENEFICIARY OF A TRANSFER ON DEATH SECURITY  
5 REGISTRATION."  
6 2. Page 5, by inserting after line 8 the  
7 following:  
8 "\_\_\_\_. A district court in this state shall have  
9 subject matter jurisdiction over a claim against a  
10 designated beneficiary brought by the decedent's  
11 personal representative or by a claimant to an  
12 interest in a security registered under this division.  
13 Any provision in a security registration form  
14 restricting jurisdiction over a claim, or restricting  
15 a choice of forum, to a forum outside this state is  
16 void."  
17 3. By renumbering as necessary.

By MERLIN E. BARTZ

S-3223 FILED MARCH 25, 1997

*Adopted 3/26/97 (p. 803)*

SENATE FILE 241

S-3292

- 1 Amend Senate File 241 as follows:  
2 1. Page 1, by striking lines 7 through 18.  
3 2. By renumbering as necessary.

By TOM VILSACK

S-3292 FILED MARCH 31, 1997

ADOPTED *adopted 3-31-97 (p. 862)*

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H. 4-1-97 Judiciary  
H. 4/10/97 Unfinished Business  
colinda

SENATE FILE 241  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 9)

(AS AMENDED AND PASSED BY THE SENATE MARCH 31, 1997)

~~-----~~ - New Language by the Senate

\* - Language Stricken by the Senate

(P.1295)

Re-Passed Senate, Date 4/21/97 (p.1300) Passed House, Date 4-16-97

Vote: Ayes 50 Nays 0 Vote: Ayes 94 Nays 2

Approved May 26, 1997

A BILL FOR

1 An Act adopting the uniform transfer on death security  
2 registration Act.

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

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S.F. 241

1 Section 1. Section 633.10, Code 1997, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 5. ACTIONS FOR ACCOUNTING.

4 An action for an accounting against a beneficiary of a  
5 transfer on death security registration, pursuant to this  
6 chapter.

\* 7 Sec. 2. NEW SECTION. 633.801 DEFINITIONS.

8 As used in this division, unless the context otherwise  
9 requires:

10 1. "Beneficiary form" means a registration of a security  
11 which indicates the present owner of the security and the  
12 intention of the owner regarding the person who will become  
13 the owner of the security upon the death of the owner.

14 2. "Devisee" means any person designated in a will to  
15 receive a disposition of real or personal property.

16 3. "Heir" means a person, including the surviving spouse,  
17 who is entitled under the statutes of intestate succession to  
18 the property of a decedent.

19 4. "Register" means to issue a certificate showing the  
20 ownership of a certificated security or, in the case of an  
21 uncertificated security, to initiate or transfer an account  
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24 transfers a security title by registration, including a broker  
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26 agent or other person acting for or as an issuer of  
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29 502.102.

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32 (1) A reinvestment account associated with a security.

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35 (4) Cash, interest, earnings, or dividends earned or

1 declared on a security in an account, a reinvestment account,  
2 or a brokerage account, whether or not credited to the account  
3 before the owner's death.

4 b. A cash balance or other property held for or due to the  
5 owner of a security as a replacement for or product of an  
6 account security, whether or not credited to the account  
7 before the owner's death.

8 8. "State" includes any state of the United States, the  
9 District of Columbia, the Commonwealth of Puerto Rico, and any  
10 territory or possession subject to the legislative authority  
11 of the United States.

12 Sec. 3. NEW SECTION. 633.802 REGISTRATION IN BENEFICIARY  
13 FORM -- SOLE OR JOINT TENANCY OWNERSHIP.

14 Only an individual whose registration of a security shows  
15 sole ownership by one individual or multiple ownership by two  
16 or more individuals with a right of survivorship, rather than  
17 as tenants in common, may obtain registration in beneficiary  
18 form. Multiple owners of a security registered in beneficiary  
19 form shall hold as joint tenants with rights of survivorship,  
20 tenants by the entireties, or owners of community property  
21 held in survivorship form and not as tenants in common.

22 Sec. 4. NEW SECTION. 633.803 REGISTRATION IN BENEFICIARY  
23 FORM -- APPLICABLE LAW.

24 1. A security may be registered in beneficiary form if the  
25 form is authorized by this division or a similar statute of  
26 the state of any of the following:

27 a. The state of organization of the issuer or registering  
28 entity.

29 b. The state of location of the registering entity's  
30 principal office.

31 c. The state of location of the office of the entity's  
32 transfer agent or the office of the entity making the  
33 registration.

34 d. The state of the address listed as the owner's at the  
35 time of registration.

1 2. A registration governed by the law of a jurisdiction in  
2 which this division or a similar statute is not in force or  
3 was not in force when a registration in beneficiary form was  
4 made is presumed to be valid and authorized as a matter of  
5 contract law.

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8 A security, whether evidenced by a certificate or account,  
9 is registered in beneficiary form when the registration  
10 includes a designation of a beneficiary to take the ownership  
11 at the death of the owner or the deaths of all multiple  
12 owners.

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14 BENEFICIARY FORM.

15 Registration in beneficiary form may be shown by any of the  
16 following, appearing after the name of the registered owner  
17 and before the name of a beneficiary:

18 1. The words "transfer on death" or the abbreviation  
19 "TOD".

20 2. The words "pay on death" or the abbreviation "POD".

21 Sec. 7. NEW SECTION. 633.806 EFFECT OF REGISTRATION IN  
22 BENEFICIARY FORM.

23 The designation of a transfer on death or pay on death  
24 beneficiary on a registration in beneficiary form has no  
25 effect on ownership until the owner's death. A registration  
26 of a security in beneficiary form may be canceled or changed  
27 at any time by the sole owner or all surviving owners without  
28 the consent of the beneficiary.

29 Sec. 8. NEW SECTION. 633.807 CLAIMS AGAINST A  
30 BENEFICIARY OF A TRANSFER ON DEATH SECURITY REGISTRATION.

31 i. If other assets of the estate of a deceased owner are  
32 insufficient to pay debts, taxes, and expenses of  
33 administration, including statutory allowances to the  
34 surviving spouse and children, a transfer at death of a  
35 security registered in beneficiary form is not effective

1 against the estate of the deceased sole owner, or if multiple  
2 owners, against the estate of the last owner to die, to the  
3 extent needed to pay debts, taxes, and expenses of  
4 administration, including statutory allowances to the  
5 surviving spouse and children.

6 2. A beneficiary of a transfer on death security  
7 registration under this division is liable to account to the  
8 personal representative of the deceased owner for the value of  
9 the security as of the time of the deceased owner's death to  
10 the extent necessary to discharge debts, taxes, and expenses  
11 of administration, including statutory allowances to the  
12 surviving spouse and children. A proceeding against a  
13 beneficiary to assert liability shall not be commenced unless  
14 the personal representative has received a written demand by  
15 the surviving spouse, a creditor, a child, or a person acting  
16 for a minor child of the deceased owner.

17 3. An action for an accounting under this section must be  
18 commenced within two years after the death of the owner.

19 4. A beneficiary against whom a proceeding is brought may  
20 elect to transfer to the personal representative the security  
21 registered in the name of the beneficiary if the beneficiary  
22 still owns the security, or the net proceeds received by the  
23 beneficiary upon disposition of the security by the  
24 beneficiary. Such transfer fully discharges the beneficiary  
25 from all liability under this section.

26 5. A beneficiary against whom a proceeding for an  
27 accounting is brought may join as a party to the proceeding a  
28 beneficiary of any other security registered in beneficiary  
29 form by the deceased owner.

30 6. Amounts recovered by the personal representative with  
31 respect to a security shall be administered as part of the  
32 deceased owner's estate.

33 7. A district court in this state shall have subject  
34 matter jurisdiction over a claim against a designated  
35 beneficiary brought by the decedent's personal representative

1 or by a claimant to an interest in a security registered under  
2 this division. Any provision in a security registration form  
3 restricting jurisdiction over a claim, or restricting a choice  
4 of forum, to a forum outside this state is void.

5 8. In an action for an accounting brought under this  
6 section, where the deceased owner was domiciled in this state,  
7 the laws of this state shall apply.

8 Sec. 9. NEW SECTION. 633.808 DEATH OF THE OWNER.

9 On the death of a sole owner or on the death of the sole  
10 surviving owner of multiple owners, the ownership of  
11 securities registered in beneficiary form passes to the  
12 beneficiary or beneficiaries who survive all owners. On proof  
13 of death of all owners and compliance with any applicable  
14 requirements of the registering entity, a security registered  
15 in beneficiary form may be reregistered in the name of the  
16 beneficiary or beneficiaries who survived the death of all  
17 owners. A registering entity shall provide notice to the  
18 department of revenue and finance of all reregistrations made  
19 pursuant to this division. The notice shall include the name,  
20 address, and social security number of the decedent and all  
21 transferees. Until the division of the security after the  
22 death of all owners, multiple beneficiaries surviving the  
23 death of all owners hold their interests as tenants in common.  
24 If no beneficiary survives the death of all owners, the  
25 security belongs to the estate of the deceased sole owner or  
26 the estate of the last to die of multiple owners.

27 Sec. 10. NEW SECTION. 633.809 PROTECTION OF REGISTERING  
28 ENTITY.

29 1. A registering entity is not required to offer or to  
30 accept a request for security registration in beneficiary  
31 form. If a registration in beneficiary form is offered by a  
32 registering entity, the owner requesting registration in  
33 beneficiary form assents to the protections provided to the  
34 registering entity by this division.

35 2. By accepting a request for registration of a security

1 in beneficiary form, the registering entity agrees that the  
2 registration in beneficiary form shall be implemented on the  
3 death of the deceased owners as provided in this division.

4 3. A registering entity is discharged from all claims to a  
5 security by the estate, creditors, heirs, or devisees of a  
6 deceased owner if the registering entity registers a transfer  
7 of the security in accordance with section 633.808 and does so  
8 in good faith reliance on all of the following:

9 a. The registration.

10 b. The provisions of this division.

11 c. Information provided by affidavit of the personal  
12 representative of the deceased owner, the surviving  
13 beneficiary, or the surviving beneficiary's representative, or  
14 other information available to the registering entity.

15 The protections of this division do not extend to a  
16 reregistration or payment made after a registering entity has  
17 received written notice from any claimant to any interest in  
18 the security objecting to implementation of a registration in  
19 beneficiary form. No other notice or other information  
20 available to the registering entity affects its right to  
21 protection under this division.

22 4. The protection provided by this division to the  
23 registering entity of a security does not affect the rights of  
24 beneficiaries in disputes between themselves and other  
25 claimants to ownership of the transferred security, its value,  
26 or its proceeds.

27 Sec. 11. NEW SECTION. 633.810 NONTESTAMENTARY TRANSFER  
28 ON DEATH.

29 1. A transfer on death resulting from a registration in  
30 beneficiary form shall be effective by reason of the contract  
31 regarding the registration between the owner and the  
32 registering entity under the provisions of this division, and  
33 is not testamentary.

34 2. The provisions of this division do not limit the rights  
35 of creditors or security owners against beneficiaries and

1 other transferees under other laws of this state.

2 Sec. 12. NEW SECTION. 633.811 TERMS, CONDITIONS, AND  
3 FORMS FOR REGISTRATION.

4 1. A registering entity offering to accept registrations  
5 in beneficiary form may establish the terms and conditions  
6 under which the registering entity receives requests for  
7 either of the following:

8 a. Registration in beneficiary form.

9 b. Implementation of registrations in beneficiary form,  
10 including requests for cancellation of previously registered  
11 transfer on death or pay on death beneficiary designations and  
12 requests for reregistration to effect a change of beneficiary.

13 2. a. The terms and conditions established by the  
14 registering entity may provide for proving death, avoiding or  
15 resolving problems concerning fractional shares, designating  
16 primary and contingent beneficiaries, and substituting a named  
17 beneficiary's descendants to take in place of the named  
18 beneficiary in the event of the beneficiary's death.

19 Substitution may be indicated by appending to the name of the  
20 beneficiary the letters "LDPS" standing for "lineal  
21 descendants per stirpes". This designation shall substitute a  
22 deceased beneficiary's descendants who survive the owner for a  
23 beneficiary who fails to survive, with the descendants to be  
24 identified and to share in accordance with the law of the  
25 beneficiary's domicile at the owner's death governing  
26 inheritance by descendants of an intestate. Other forms of  
27 identifying beneficiaries who are to take on one or more  
28 contingencies, and rules for providing proofs and assurances  
29 needed to satisfy reasonable concerns by registering entities  
30 regarding conditions and identities relevant to accurate  
31 implementation of registrations in beneficiary form, may be  
32 contained in a registering entity's terms and conditions.

33 b. The following are illustrations of registrations in  
34 beneficiary form which a registering entity may authorize:

35 (1) Sole owner-sole beneficiary: OWNER'S NAME transfer on

1 death (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

2 (2) Multiple owners-sole beneficiary: OWNERS' NAMES, as  
3 joint tenants or tenants in the entirety, transfer on death  
4 (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

5 (3) Multiple owners-primary and secondary (substituted)  
6 beneficiaries: OWNERS' NAMES as joint tenants or tenants in  
7 the entirety, transfer on death (TOD) or pay on death (POD) to  
8 BENEFICIARY'S NAME, or lineal descendants per stirpes.

9 Sec. 13. APPLICATION. The provisions of this division  
10 apply to registrations of securities in beneficiary form made  
11 before, on, or after the effective date of this Act, by  
12 decedents dying on or after the effective date of this Act.

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## SENATE FILE 241

R-1697

1 Amend Senate File 241 as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 633.3, Code 1997, is amended  
6 by adding the following new subsection:

7 NEW SUBSECTION. 18A. FUNCTIONAL LIMITATIONS --  
8 means the behavior or condition of a person which  
9 impairs the person's ability to care for the person's  
10 personal safety or to attend to or provide for  
11 necessities for the person.

12 Sec. 2. Section 633.3, subsection 22, Code 1997,  
13 is amended to read as follows:

14 22. INCOMPETENT ---includes means the condition of  
15 any person who has been adjudicated by a court to be  
16 incapable of managing the person's property, or caring  
17 for the person's own self, or both to meet at least  
18 one of the following conditions:

19 a. To have a decision-making capacity which is so  
20 impaired that the person is unable to care for the  
21 person's personal safety or to attend to or provide  
22 for necessities for the person such as food, shelter,  
23 clothing, or medical care, without which physical  
24 injury or illness may occur.

25 b. To have a decision-making capacity which is so  
26 impaired that the person is unable to make,  
27 communicate, or carry out important decisions  
28 concerning the person's financial affairs.

29 c. To have a decision-making capacity which is so  
30 impaired that both paragraphs "a" and "b" are  
31 applicable to the person."

32 2. Page 1, by inserting after line 6 the  
33 following:

34 "Sec. \_\_\_\_ . NEW SECTION. 633.551A GUARDIANSHIPS  
35 AND CONSERVATORSHIPS -- GENERAL PROVISIONS.

36 1. The determination of incompetency of the  
37 proposed ward or ward and the determination of the  
38 need for the appointment of a guardian or conservator  
39 or of the modification or termination of a  
40 guardianship or conservatorship shall be supported by  
41 clear and convincing evidence.

42 2. The burden of persuasion is on the petitioner  
43 in an initial proceeding to appoint a guardian or  
44 conservator. In a proceeding to modify or terminate a  
45 guardianship or conservatorship, if the guardian or  
46 conservator is the petitioner, the burden of  
47 persuasion remains with the guardian or conservator.  
48 In a proceeding to terminate a guardianship or  
49 conservatorship, if the ward is the petitioner, the  
50 ward shall make a prima facie showing of some

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1 decision-making capacity. Once a prima facie showing  
2 is made, the burden of persuasion is on the guardian  
3 or conservator to show by clear and convincing  
4 evidence that the ward is incompetent.

5 3. In determining whether a guardianship or  
6 conservatorship is to be established, modified, or  
7 terminated, the district court shall consider if a  
8 limited guardianship or conservatorship pursuant to  
9 section 633.635 or 633.637 is appropriate. In making  
10 the determination, the court shall make findings of  
11 fact to support the powers conferred on the guardian  
12 or conservator.

13 4. In proceedings to establish, modify, or  
14 terminate a guardianship or conservatorship, in  
15 determining if the proposed ward or ward is  
16 incompetent as defined in section 633.3, the court  
17 shall consider credible evidence from any source to  
18 the effect of third-party assistance in meeting the  
19 needs of the proposed ward or ward. However, neither  
20 party to the action shall have the burden to produce  
21 such evidence relating to third-party assistance.

22 Sec. \_\_\_\_\_. Section 633.552, subsection 2, paragraph  
23 a, Code 1997, is amended to read as follows:

24 ~~a--By-reason-of-mental-physical-or-other~~  
25 ~~incapacity-is-unable-to-make-or-carry-out-important~~  
26 ~~decisions-concerning-the-proposed-ward's-person-or~~  
27 ~~affairs,-other-than-financial-affairs-~~

28 a. Is a person whose decision-making capacity is  
29 so impaired that the person is unable to care for the  
30 person's personal safety or to attend to or provide  
31 for necessities for the person such as food, shelter,  
32 clothing, or medical care, without which physical  
33 injury or illness might occur.

34 Sec. \_\_\_\_\_. Section 633.556, Code 1997, is amended  
35 to read as follows:

36 633.556 APPOINTMENT OF GUARDIAN.

37 1. If the allegations of the petition as to the  
38 status of the proposed ward and the necessity for the  
39 appointment of a guardian are proved by clear and  
40 convincing evidence, the court may appoint a guardian.

41 2. In all proceedings to appoint a guardian, the  
42 court shall consider the functional limitations of the  
43 proposed ward and whether a limited guardianship, as  
44 authorized in section 633.635, is appropriate.

45 3. Section 633.551A applies to the appointment of  
46 a conservator.

47 Sec. \_\_\_\_\_. Section 633.557, Code 1997, is amended  
48 to read as follows:

49 633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY  
50 PETITION.

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1 1. A guardian may also be appointed by the court  
2 upon the verified petition of the proposed ward,  
3 without further notice, if the proposed ward is other  
4 than a minor under the age of fourteen years, provided  
5 the court determines that such an appointment will  
6 inure to the best interest of the applicant. However,  
7 if an involuntary petition is pending, the court shall  
8 be governed by section 633.634. The petition shall  
9 provide the proposed ward notice of a guardian's  
10 powers as provided in section 633.562.

11 2. In all proceedings to appoint a guardian, the  
12 court shall consider whether a limited guardianship,  
13 as authorized in section 633.635, is appropriate.

14 Sec. \_\_\_\_ . Section 633.560, Code 1997, is amended  
15 to read as follows:

16 633.560 APPOINTMENT OF GUARDIAN ON A STANDBY  
17 BASIS.

18 A petition for the appointment of a guardian on a  
19 standby basis may be filed by any person under the  
20 same procedure and requirements as provided in  
21 sections 633.591 to 633.597, for appointment of  
22 standby conservator, insofar as applicable. In all  
23 proceedings to appoint a guardian, the court shall  
24 consider whether a limited guardianship, as authorized  
25 in section 633.635, is appropriate.

26 Sec. \_\_\_\_ . Section 633.566, subsection 2, paragraph  
27 a, Code 1997, is amended to read as follows:

28 ~~a---By-reason-of-mental,-physical-or-other~~  
29 ~~incapacity-is-unable-to-make-or-carry-out-important~~  
30 ~~decisions-concerning-the-proposed-ward's-financial~~  
31 ~~affairs-~~

32 a. Is a person whose decision-making capacity is  
33 so impaired that the person is unable to make,  
34 communicate, or carry out important decisions  
35 concerning the person's financial affairs.

36 Sec. \_\_\_\_ . Section 633.570, Code 1997, is amended  
37 to read as follows:

38 633.570 APPOINTMENT OF CONSERVATOR.

39 1. If the allegations of the petition as to the  
40 status of the proposed ward and the necessity for the  
41 appointment of a conservator are proved by clear and  
42 convincing evidence, the court may appoint a  
43 conservator.

44 2. In all proceedings to appoint a conservator,  
45 the court shall consider the functional limitations of  
46 the person and whether a limited conservatorship, as  
47 authorized in section 633.637, is appropriate.

48 3. Section 633.551A applies to the appointment of  
49 a conservator.

50 Sec. \_\_\_\_ . Section 633.572, Code 1997, is amended

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1 to read as follows:

2 633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY  
3 PETITION.

4 1. A conservator may also be appointed by the  
5 court upon the verified petition of the proposed ward,  
6 without further notice, if the proposed ward is other  
7 than a minor under the age of fourteen years, provided  
8 the court determines that such an appointment will  
9 inure to the best interest of the applicant. However,  
10 if an involuntary petition is pending, the court shall  
11 be governed by section 633.634. The petition shall  
12 provide the proposed ward notice of a conservator's  
13 powers as provided in section 633.576.

14 2. In all proceedings to appoint a conservator,  
15 the court shall consider whether a limited  
16 conservatorship, as authorized in section 633.637, is  
17 appropriate.

18 Sec. \_\_\_\_ . Section 633.596, Code 1997, is amended  
19 to read as follows:

20 633.596 ~~TIME-OF~~ CONSIDERATIONS -- APPOINTMENT OF  
21 CONSERVATOR.

22 At the time ~~such a standby petition is filed under~~  
23 ~~this part, the court, without any notice, may appoint~~  
24 ~~the conservator nominated in such petition or may set~~  
25 ~~the petition for hearing on such notice as the court~~  
26 ~~may prescribe shall consider whether a limited~~  
27 ~~conservatorship, as authorized in section 633.637, is~~  
28 ~~appropriate.~~

29 Sec. \_\_\_\_ . Section 633.635, subsection 1,  
30 unnumbered paragraph 1, Code 1997, is amended to read  
31 as follows:

32 A Based upon the evidence produced at the hearing,  
33 the court may grant a guardian may be granted the  
34 following powers and duties which may be exercised  
35 without prior court approval:

36 Sec. \_\_\_\_ . Section 633.635, subsections 3 and 4,  
37 Code 1997, are amended to read as follows:

38 3. The court may take into account all available  
39 information concerning the capabilities of the ward  
40 and any additional evaluation deemed necessary,  
41 including the availability of third-party assistance  
42 to meet the needs of the ward or proposed ward, and  
43 may direct that the guardian have only a specially  
44 limited responsibility for the ward. In that event,  
45 the court shall state those areas of responsibility  
46 which shall be supervised by the guardian and all  
47 others shall be retained by the ward. The court may  
48 make a finding that the ward lacks the capacity to  
49 contract a valid marriage.

50 4. From time to time, upon a proper showing, the

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1 court may alter modify the respective responsibilities  
 2 of the guardian and the ward, after notice to the ward  
 3 and an opportunity to be heard. Any modification that  
 4 would be more restrictive or burdensome for the ward  
 5 shall be based on clear and convincing evidence that  
 6 the ward continues to fall within the categories of  
 7 section 633.552, subsection 2, paragraph "a" or "b",  
 8 and that the facts justify a modification of the  
 9 guardianship. Section 633.551A applies to the  
 10 modification proceedings. Any modification that would  
 11 be less restrictive for the ward shall be based upon  
 12 proof in accordance with the requirements of section  
 13 633.675.

14 Sec. \_\_\_\_ . Section 633.637, Code 1997, is amended  
 15 to read as follows:

16 633.637 POWERS OF WARD.

17 A ward for whom a conservator has been appointed  
 18 shall not have the power to convey, encumber, or  
 19 dispose of property in any manner, other than by will  
 20 if the ward possesses the requisite testamentary  
 21 capacity, unless the court determines that the ward  
 22 has a limited ability to handle the ward's own funds.  
 23 If the court makes such a finding, it shall specify to  
 24 what extent the ward may possess and use the ward's  
 25 own funds.

26 Any modification of the powers of the ward that  
 27 would be more restrictive of the ward's control over  
 28 the ward's financial affairs shall be based upon clear  
 29 and convincing evidence and the burden of persuasion  
 30 is on the conservator. Any modification that would be  
 31 less restrictive of the ward's control over the ward's  
 32 financial affairs shall be based upon proof in  
 33 accordance with the requirements of section 633.675.

34 Sec. \_\_\_\_ . Section 633.675, subsection 3, Code  
 35 1997, is amended to read as follows:

36 3. ~~A determination by the court that the ward is~~  
 37 ~~competent-and-capable-of-managing-the-ward's-property~~  
 38 ~~and-affairs,-and-that-the-continuance-of-the~~  
 39 ~~guardianship-or-conservatorship-would-not-be-in-the~~  
 40 ~~ward's-best-interests no longer a person whose~~  
 41 ~~decision-making capacity is so impaired as to bring~~  
 42 ~~the ward within the categories of section 633.552,~~  
 43 ~~subsection 2, paragraph "a", or section 633.566,~~  
 44 ~~subsection 2, paragraph "a". In a proceeding to~~  
 45 ~~terminate a guardianship or a conservatorship, the~~  
 46 ~~ward shall make a prima facie showing that the ward~~  
 47 ~~has some decision-making capacity. Once the ward has~~  
 48 ~~made that showing, the guardian or conservator has the~~  
 49 ~~burden to prove by clear and convincing evidence that~~  
 50 ~~the ward's decision-making capacity is so impaired, as~~

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1 provided in section 633.552, subsection 2, paragraph  
2 "a", or section 633.566, subsection 2, paragraph "a",  
3 that the guardianship or conservatorship should not be  
4 terminated."

5 3. Title page, line 1, by inserting after the  
6 word "Act" the following: "relating to the probate  
7 code including guardianships and conservatorships  
8 and".

9 4. By renumbering as necessary.

By DINKLA of Guthrie

CHAPMAN of Linn  
LAMBERTI of Polk

H-1697 FILED APRIL 14, 1997

*Adopted*

*4-16-97 (P. 1294)*

SENATE FILE 241

H-1707

1 Amend the amendment, H-1568, to Senate File 241, as  
2 amended, passed, and reprinted by the Senate, as  
3 follows:

- 4 1. Page 1, by striking lines 10 through 14.
- 5 2. Page 1, by striking line 18.
- 6 3. By renumbering as necessary.

By LAMBERTI of Polk

H-1707 FILED APRIL 14, 1997

*Withdrawn*

*4-16-97*

*(P. 1288)*

## SENATE FILE 241

H-1754

1 Amend Senate File 241, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 614.14, subsection 4,  
6 paragraph b, Code 1997, is amended to read as follows:

7 b. That, to the knowledge of the trustee, the  
8 person creating the trust was under no disability or  
9 infirmity at the time the trust was created.

10 Sec. 2. Section 627.6, subsection 8, Code 1997, is  
11 amended by adding the following new paragraph:

12 NEW PARAGRAPH. f. All contributions to and assets  
13 in the following list of plans or contracts and the  
14 accumulated earnings, and market increases in value,  
15 therefrom: simplified employee pension plans, self-  
16 employed pension plans, Keogh plans, individual  
17 retirement accounts, and similar plans for retirement  
18 investments in the future authorized under federal  
19 law. However, contributions to a plan shall not be  
20 exempt to the extent that the contributions for the  
21 twenty-four month period prior to the date the  
22 exemption is claimed or execution is issued exceed ten  
23 thousand dollars in the aggregate over and above the  
24 average contributions that had been made to the plan  
25 or plans by the debtor or the debtor's employer or  
26 both in the five tax years ending prior to the twenty-  
27 four-month period before the date the exemption is  
28 claimed or the execution is issued. The exception to  
29 the exemption in this paragraph for contributions  
30 within the twenty-four-month period prior to the date  
31 the exemption is claimed or execution is issued shall  
32 not include the interest and any accumulation on that  
33 interest in any new plans or contracts that are used  
34 to replace prior plans, contracts, or policies that  
35 would have been excludable from a bankruptcy estate or  
36 that the debtor could have claimed exempt from  
37 execution at the time of the transfer. For purposes  
38 of this paragraph, market increases in value shall  
39 include, but not be limited to, dividends, stock  
40 splits, interest, and appreciation.

41 Sec. 3. NEW SECTION. 627.6A EXEMPTION FROM  
42 EXECUTION FOR CHILD SUPPORT.

43 Notwithstanding the provisions of section 627.6, a  
44 creditor to whom child support is owed may bring an  
45 action pursuant to this section for satisfaction of a  
46 child support order against assets which are otherwise  
47 exempt. Such an action shall be commenced by filing a  
48 petition for application of exempt assets in the same  
49 manner as provided in chapter 598 for the filing of a  
50 petition for modification. Upon notice as required

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1 for the commencement of an original action and after a  
2 hearing, the court may order that the exempt assets  
3 provided for in section 627.6, in whole or in part,  
4 are not exempt from the collection of the child  
5 support obligation. Notwithstanding an action of the  
6 state court under this section, a bankruptcy court may  
7 make the determination that the otherwise exempt  
8 assets provided for in section 627.6 are not exempt  
9 from the claims of a child support creditor if such  
10 creditor objects to the exemptions claimed by the  
11 debtor in conformity with 11 U.S.C. § 522(1) and  
12 federal rule of bankruptcy procedure 4003.

13 Sec. 4. Section 633.10, subsection 4, Code 1997,  
14 is amended by adding the following new paragraph:  
15 NEW PARAGRAPH. d. A trust that is administered  
16 solely or jointly by an individual trustee or trustees  
17 is not subject to the jurisdiction of the court unless  
18 jurisdiction is invoked by a trustee or beneficiary,  
19 or if otherwise provided by the governing instrument.  
20 Upon application of all trustees administering a trust  
21 which is subject to the court's jurisdiction, and  
22 following notice to beneficiaries as provided in  
23 section 633.40, subsection 4, the court shall release  
24 the trust from further jurisdiction unless one or more  
25 beneficiaries object, on the condition that  
26 jurisdiction may thereafter be invoked by a trustee or  
27 beneficiary. The provisions of this paragraph shall  
28 be effective for applications filed on or after July  
29 1, 1997."

30 2. Page 1, by inserting after line 6 the  
31 following:

32 "Sec. \_\_\_\_ . Section 633.31, Code 1997, is amended  
33 by adding the following new subsection:

34 NEW SUBSECTION. 3. The fee set forth in  
35 subsection 2, paragraph "k", shall not be charged on  
36 any property transferred to a testamentary trust from  
37 an estate that has been administered in this state and  
38 for which court costs have been assessed and paid.

39 Sec. \_\_\_\_ . NEW SECTION. 633.357 CUSTODIAL  
40 INDIVIDUAL RETIREMENT ACCOUNTS.

41 1. As used in this section, unless the context  
42 otherwise requires:

43 a. "Custodial independent retirement account"  
44 means an individual retirement account in accordance  
45 with section 408(a) of the Internal Revenue Code, the  
46 assets of which are not held in trust.

47 b. "Designator" means a person entitled to  
48 designate the beneficiary or beneficiaries of a  
49 custodial independent retirement account.

50 2. The assets of a custodial independent

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1 retirement account shall pass on or after the death of  
2 the designator of the custodial independent retirement  
3 account to the beneficiary or beneficiaries specified  
4 in the custodial independent retirement account  
5 agreement signed by the designator or designated by  
6 the designator in writing pursuant to the custodial  
7 independent retirement account agreement. Assets that  
8 pass to a beneficiary pursuant to this section shall  
9 not be considered part of the designator's probate  
10 estate except to the extent that the designator's  
11 estate is a beneficiary. The designation of a  
12 beneficiary shall not be considered testamentary and  
13 does not have to be witnessed.

14 3. This section applies to a custodial independent  
15 retirement account established and a beneficiary  
16 designation made prior to, on, or after the effective  
17 date of this Act. This section shall be considered to  
18 be declarative of the law as the law existed  
19 immediately prior to the effective date of this Act.

20 4. This section shall not be construed to imply  
21 that assets or benefits that are payable upon the  
22 death of a person to a beneficiary or beneficiaries  
23 designated in or pursuant to a written arrangement not  
24 described in this section, other than a will, are part  
25 of the person's probate estate or that the arrangement  
26 is testamentary.

27 Sec. \_\_\_\_ . Section 633.410, Code 1997, is amended  
28 to read as follows:

29 633.410 LIMITATION ON FILING CLAIMS AGAINST  
30 DECEDENT'S ESTATE.

31 All claims against a decedent's estate, other than  
32 charges, whether due or to become due, absolute or  
33 contingent, liquidated or unliquidated, founded on  
34 contract or otherwise, are forever barred against the  
35 estate, the personal representative, and the  
36 distributees of the estate, unless filed with the  
37 clerk within the later to occur of four months after  
38 the date of the second publication of the notice to  
39 creditors or, as to each claimant whose identity is  
40 reasonably ascertainable, one month after service of  
41 notice by ordinary mail to the claimant's last known  
42 address. However, notice is not required to be given  
43 by mail to any creditor whose claim will be paid or  
44 otherwise satisfied during administration and the  
45 personal representative may waive the limitation on  
46 filing provided under this section. This section does  
47 not bar claims for which there is insurance coverage,  
48 to the extent of the coverage, ~~claims-for-debts~~  
49 ~~created-under-section-249A-5-relating-to-the-recovery~~  
50 ~~of-medical-assistance-payments~~, or claimants entitled

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1 to equitable relief due to peculiar circumstances.  
2 Sec. \_\_\_\_\_. Section 633.440, Code 1997, is amended  
3 to read as follows:

4 633.440 CONTENTS OF NOTICE OF DISALLOWANCE.

5 Such a notice of disallowance shall advise the  
6 claimant that the claim has been disallowed and will  
7 be forever barred unless the claimant shall within  
8 twenty days after the date of mailing the notice, file  
9 a request for hearing on the claim with the clerk, and  
10 mail a copy of such request for hearing to the  
11 personal representative and the attorney of record, if  
12 any, by certified mail.

13 Sec. \_\_\_\_\_. Section 633.681, Code 1997, is amended  
14 to read as follows:

15 633.681 ASSETS OF MINOR WARD EXHAUSTED.

16 When the assets of a minor ward's conservatorship  
17 are exhausted or consist of personal property only of  
18 an aggregate value not in excess of four ten thousand  
19 dollars, the court, upon application or upon its own  
20 motion, may terminate the conservatorship and. The  
21 order for termination shall direct the conservator to  
22 deliver the any property remaining after the payment  
23 of allowed claims and expenses of administration to  
24 the parent or other person entitled to the custody of  
25 the minor ward, for the use of the ward, after payment  
26 of allowed claims and expenses of administration a  
27 custodian under any uniform transfers to minors Act.

28 Such delivery shall have the same force and effect as  
29 if delivery had been made to the ward after attaining  
30 majority.

31 Sec. \_\_\_\_\_. Section 633.704, subsection 3, paragraph  
32 a, Code 1997, is amended to read as follows:

33 a. PASSAGE OF DISCLAIMED INTEREST OR PROPERTY.

34 Unless the transferor has otherwise provided, the  
35 property, interest, or right disclaimed, and any  
36 future interest which is to take effect in possession  
37 or enjoyment at or after the termination of the  
38 interest or right disclaimed, descends or shall be  
39 distributed as if the disclaimant has died prior to  
40 the date of the transfer, or if the disclaimant is one  
41 designated to take pursuant to a power of appointment  
42 exercised by testamentary instrument, then as if the  
43 disclaimant has predeceased the donee of the power  
44 unless the donee of the power has otherwise provided.  
45 In every case, the disclaimer relates back for all  
46 purposes to the date of the transfer. ~~In the case of~~  
47 ~~a disclaiming beneficiary under a will, other than a~~  
48 ~~spouse, the property, interest, or right disclaimed~~  
49 ~~passes to the heirs of the disclaimant unless from the~~  
50 ~~terms of the transferor's will the intent is clear and~~

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1 ~~explicit-to-the-contrary,-in-which-event-the-property,~~  
 2 ~~interest,-or-right-disclaimed-passes-pursuant-to-the~~  
 3 ~~will.~~ In the case of a disclaimer under a will by a  
 4 spouse the property, interest, or right disclaimed  
 5 lapses unless from the terms of the transferor's will  
 6 the intent is clear and explicit to the contrary."

7 3. Title page, line 1, by inserting after the  
 8 word "Act" the following: "relating to estates and  
 9 probate, and".

10 4. By renumbering as necessary.

By LAMBERTI of Polk

H-1754 FILED APRIL 15, 1997

4-16-97

WITHDRAWN

(P. 1294)

SENATE FILE 241

H-1753

- 1 Amend the amendment, H-1568, to Senate File 241, as
- 2 amended, passed, and reprinted by the Senate, as
- 3 follows:
- 4 1. Page 1, by striking line 18.
- 5 2. By renumbering as necessary.

By LAMBERTI of Polk

H-1753 FILED APRIL 15, 1997

*adopted 4/16/97*

*(p.1288)*

SENATE FILE 241

H-1568

- 1 Amend Senate File 241, as amended, passed, and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 1, by inserting after line 6 the
- 4 following:
- 5 "Sec \_\_\_\_ . NEW SECTION. 633.800 SHORT TITLE --
- 6 RULES OF CONSTRUCTION.
- 7 1. This division shall be known and may be cited
- 8 as the uniform transfer on death security registration
- 9 Act.
- 10 2. The provisions of this division shall be
- 11 liberally construed and applied to promote its
- 12 underlying purposes and policy and to make uniform the
- 13 laws with respect to the subject of its provisions
- 14 among states enacting this uniform Act.
- 15 3. Unless displaced by the particular provisions
- 16 of this division, the principles of law and equity
- 17 supplement the provisions of this division."
- 18 2. Page 5, by striking lines 5 through 7.
- 19 3. By renumbering as necessary.

By COMMITTEE ON JUDICIARY  
LAMBERTI of Polk, Chairperson

H-1568 FILED APRIL 7, 1997

*adopted*  
*4/16/97*  
*(p.1288)*

HOUSE AMENDMENT TO  
SENATE FILE 241

S-3556

1 Amend Senate File 241, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 633.3, Code 1997, is amended  
6 by adding the following new subsection:

7 NEW SUBSECTION. 18A. FUNCTIONAL LIMITATIONS --  
8 means the behavior or condition of a person which  
9 impairs the person's ability to care for the person's  
10 personal safety or to attend to or provide for  
11 necessities for the person.

12 Sec. 2. Section 633.3, subsection 22, Code 1997,  
13 is amended to read as follows:

14 22. INCOMPETENT ---~~includes~~ means the condition of  
15 any person who has been adjudicated by a court to-be  
16 incapable-of-managing-the-person's-property,-or-caring  
17 for-the-person's-own-self,-or-both to meet at least  
18 one of the following conditions:

19 a. To have a decision-making capacity which is so  
20 impaired that the person is unable to care for the  
21 person's personal safety or to attend to or provide  
22 for necessities for the person such as food, shelter,  
23 clothing, or medical care, without which physical  
24 injury or illness may occur.

25 b. To have a decision-making capacity which is so  
26 impaired that the person is unable to make,  
27 communicate, or carry out important decisions  
28 concerning the person's financial affairs.

29 c. To have a decision-making capacity which is so  
30 impaired that both paragraphs "a" and "b" are  
31 applicable to the person."

32 2. Page 1, by inserting after line 6 the  
33 following:

34 "Sec. \_\_\_\_ . NEW SECTION. 633.551A GUARDIANSHIPS  
35 AND CONSERVATORSHIPS -- GENERAL PROVISIONS.

36 1. The determination of incompetency of the  
37 proposed ward or ward and the determination of the  
38 need for the appointment of a guardian or conservator  
39 or of the modification or termination of a  
40 guardianship or conservatorship shall be supported by  
41 clear and convincing evidence.

42 2. The burden of persuasion is on the petitioner  
43 in an initial proceeding to appoint a guardian or  
44 conservator. In a proceeding to modify or terminate a  
45 guardianship or conservatorship, if the guardian or  
46 conservator is the petitioner, the burden of  
47 persuasion remains with the guardian or conservator.  
48 In a proceeding to terminate a guardianship or  
49 conservatorship, if the ward is the petitioner, the  
50 ward shall make a prima facie showing of some

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1 decision-making capacity. Once a prima facie showing  
2 is made, the burden of persuasion is on the guardian  
3 or conservator to show by clear and convincing  
4 evidence that the ward is incompetent.

5 3. In determining whether a guardianship or  
6 conservatorship is to be established, modified, or  
7 terminated, the district court shall consider if a  
8 limited guardianship or conservatorship pursuant to  
9 section 633.635 or 633.637 is appropriate. In making  
10 the determination, the court shall make findings of  
11 fact to support the powers conferred on the guardian  
12 or conservator.

13 4. In proceedings to establish, modify, or  
14 terminate a guardianship or conservatorship, in  
15 determining if the proposed ward or ward is  
16 incompetent as defined in section 633.3, the court  
17 shall consider credible evidence from any source to  
18 the effect of third-party assistance in meeting the  
19 needs of the proposed ward or ward. However, neither  
20 party to the action shall have the burden to produce  
21 such evidence relating to third-party assistance.

22 Sec. \_\_\_\_ . Section 633.552, subsection 2, paragraph  
23 a, Code 1997, is amended to read as follows:

24 ~~a. --By reason of mental, physical or other~~  
25 ~~incapacity is unable to make or carry out important~~  
26 ~~decisions concerning the proposed ward's person or~~  
27 ~~affairs, other than financial affairs.~~

28 a. Is a person whose decision-making capacity is  
29 so impaired that the person is unable to care for the  
30 person's personal safety or to attend to or provide  
31 for necessities for the person such as food, shelter,  
32 clothing, or medical care, without which physical  
33 injury or illness might occur.

34 Sec. \_\_\_\_ . Section 633.556, Code 1997, is amended  
35 to read as follows:

36 633.556 APPOINTMENT OF GUARDIAN.

37 1. If the allegations of the petition as to the  
38 status of the proposed ward and the necessity for the  
39 appointment of a guardian are proved by clear and  
40 convincing evidence, the court may appoint a guardian.

41 2. In all proceedings to appoint a guardian, the  
42 court shall consider the functional limitations of the  
43 proposed ward and whether a limited guardianship, as  
44 authorized in section 633.635, is appropriate.

45 3. Section 633.551A applies to the appointment of  
46 a conservator.

47 Sec. \_\_\_\_ . Section 633.557, Code 1997, is amended  
48 to read as follows:

49 633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY  
50 PETITION.

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1 1. A guardian may also be appointed by the court  
2 upon the verified petition of the proposed ward,  
3 without further notice, if the proposed ward is other  
4 than a minor under the age of fourteen years, provided  
5 the court determines that such an appointment will  
6 inure to the best interest of the applicant. However,  
7 if an involuntary petition is pending, the court shall  
8 be governed by section 633.634. The petition shall  
9 provide the proposed ward notice of a guardian's  
10 powers as provided in section 633.562.

11 2. In all proceedings to appoint a guardian, the  
12 court shall consider whether a limited guardianship,  
13 as authorized in section 633.635, is appropriate.

14 Sec. \_\_\_\_\_. Section 633.560, Code 1997, is amended  
15 to read as follows:

16 633.560 APPOINTMENT OF GUARDIAN ON A STANDBY  
17 BASIS.

18 A petition for the appointment of a guardian on a  
19 standby basis may be filed by any person under the  
20 same procedure and requirements as provided in  
21 sections 633.591 to 633.597, for appointment of  
22 standby conservator, insofar as applicable. In all  
23 proceedings to appoint a guardian, the court shall  
24 consider whether a limited guardianship, as authorized  
25 in section 633.635, is appropriate.

26 Sec. \_\_\_\_\_. Section 633.566, subsection 2, paragraph  
27 a, Code 1997, is amended to read as follows:

28 ~~a. By reason of mental, physical or other~~  
29 ~~incapacity is unable to make or carry out important~~  
30 ~~decisions concerning the proposed ward's financial~~  
31 ~~affairs.~~

32 a. Is a person whose decision-making capacity is  
33 so impaired that the person is unable to make,  
34 communicate, or carry out important decisions  
35 concerning the person's financial affairs.

36 Sec. \_\_\_\_\_. Section 633.570, Code 1997, is amended  
37 to read as follows:

38 633.570 APPOINTMENT OF CONSERVATOR.

39 1. If the allegations of the petition as to the  
40 status of the proposed ward and the necessity for the  
41 appointment of a conservator are proved by clear and  
42 convincing evidence, the court may appoint a  
43 conservator.

44 2. In all proceedings to appoint a conservator,  
45 the court shall consider the functional limitations of  
46 the person and whether a limited conservatorship, as  
47 authorized in section 633.637, is appropriate.

48 3. Section 633.551A applies to the appointment of  
49 a conservator.

50 Sec. \_\_\_\_\_. Section 633.572, Code 1997, is amended

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1 to read as follows:

2 633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY  
3 PETITION.

4 1. A conservator may also be appointed by the  
5 court upon the verified petition of the proposed ward,  
6 without further notice, if the proposed ward is other  
7 than a minor under the age of fourteen years, provided  
8 the court determines that such an appointment will  
9 inure to the best interest of the applicant. However,  
10 if an involuntary petition is pending, the court shall  
11 be governed by section 633.634. The petition shall  
12 provide the proposed ward notice of a conservator's  
13 powers as provided in section 633.576.

14 2. In all proceedings to appoint a conservator,  
15 the court shall consider whether a limited  
16 conservatorship, as authorized in section 633.637, is  
17 appropriate.

18 Sec. \_\_\_\_\_. Section 633.596, Code 1997, is amended  
19 to read as follows:

20 633.596 ~~TIME-OF~~ CONSIDERATIONS -- APPOINTMENT OF  
21 CONSERVATOR.

22 At the time such a standby petition is filed under  
23 this part, the court, without any notice, may appoint  
24 the conservator nominated in such petition or may set  
25 the petition for hearing on such notice as the court  
26 may prescribe shall consider whether a limited  
27 conservatorship, as authorized in section 633.637, is  
28 appropriate.

29 Sec. \_\_\_\_\_. Section 633.635, subsection 1,  
30 unnumbered paragraph 1, Code 1997, is amended to read  
31 as follows:

32 A Based upon the evidence produced at the hearing,  
33 the court may grant a guardian may-be-granted the  
34 following powers and duties which may be exercised  
35 without prior court approval:

36 Sec. \_\_\_\_\_. Section 633.635, subsections 3 and 4,  
37 Code 1997, are amended to read as follows:

38 3. The court may take into account all available  
39 information concerning the capabilities of the ward  
40 and any additional evaluation deemed necessary,  
41 including the availability of third-party assistance  
42 to meet the needs of the ward or proposed ward, and  
43 may direct that the guardian have only a specially  
44 limited responsibility for the ward. In that event,  
45 the court shall state those areas of responsibility  
46 which shall be supervised by the guardian and all  
47 others shall be retained by the ward. The court may  
48 make a finding that the ward lacks the capacity to  
49 contract a valid marriage.

50 4. From time to time, upon a proper showing, the

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1 court may ~~alter~~ modify the respective responsibilities  
2 of the guardian and the ward, after notice to the ward  
3 and an opportunity to be heard. Any modification that  
4 would be more restrictive or burdensome for the ward  
5 shall be based on clear and convincing evidence that  
6 the ward continues to fall within the categories of  
7 section 633.552, subsection 2, paragraph "a" or "b",  
8 and that the facts justify a modification of the  
9 guardianship. Section 633.551A applies to the  
10 modification proceedings. Any modification that would  
11 be less restrictive for the ward shall be based upon  
12 proof in accordance with the requirements of section  
13 633.675.

14 Sec. \_\_\_\_ . Section 633.637, Code 1997, is amended  
15 to read as follows:

16 633.637 POWERS OF WARD.

17 A ward for whom a conservator has been appointed  
18 shall not have the power to convey, encumber, or  
19 dispose of property in any manner, other than by will  
20 if the ward possesses the requisite testamentary  
21 capacity, unless the court determines that the ward  
22 has a limited ability to handle the ward's own funds.  
23 If the court makes such a finding, it shall specify to  
24 what extent the ward may possess and use the ward's  
25 own funds.

26 Any modification of the powers of the ward that  
27 would be more restrictive of the ward's control over  
28 the ward's financial affairs shall be based upon clear  
29 and convincing evidence and the burden of persuasion  
30 is on the conservator. Any modification that would be  
31 less restrictive of the ward's control over the ward's  
32 financial affairs shall be based upon proof in  
33 accordance with the requirements of section 633.675.

34 Sec. \_\_\_\_ . Section 633.675, subsection 3, Code  
35 1997, is amended to read as follows:

36 3. ~~A determination by the court that the ward is~~  
37 ~~competent-and-capable-of-managing-the-ward's-property~~  
38 ~~and-affairs,-and-that-the-continuance-of-the~~  
39 ~~guardianship-or-conservatorship-would-not-be-in-the~~  
40 ~~ward's-best-interests no longer a person whose~~  
41 ~~decision-making capacity is so impaired as to bring~~  
42 ~~the ward within the categories of section 633.552,~~  
43 ~~subsection 2, paragraph "a", or section 633.566,~~  
44 ~~subsection 2, paragraph "a". In a proceeding to~~  
45 ~~terminate a guardianship or a conservatorship, the~~  
46 ~~ward shall make a prima facie showing that the ward~~  
47 ~~has some decision-making capacity. Once the ward has~~  
48 ~~made that showing, the guardian or conservator has the~~  
49 ~~burden to prove by clear and convincing evidence that~~  
50 ~~the ward's decision-making capacity is so impaired, as~~

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1 provided in section 633.552, subsection 2, paragraph  
2 "a", or section 633.566, subsection 2, paragraph "a",  
3 that the guardianship or conservatorship should not be  
4 terminated."

5 3. Page 1, by inserting after line 6 the  
6 following:

7 "Sec \_\_\_\_ . NEW SECTION. 633.800 SHORT TITLE --  
8 RULES OF CONSTRUCTION.

9 1. This division shall be known and may be cited  
10 as the uniform transfer on death security registration  
11 Act.

12 2. The provisions of this division shall be  
13 liberally construed and applied to promote its  
14 underlying purposes and policy and to make uniform the  
15 laws with respect to the subject of its provisions  
16 among states enacting this uniform Act.

17 3. Unless displaced by the particular provisions  
18 of this division, the principles of law and equity  
19 supplement the provisions of this division."

20 4. Title page, line 1, by inserting after the  
21 word "Act" the following: "relating to the probate  
22 code including guardianships and conservatorships  
23 and".

24 5. By renumbering, relettering, or redesignating  
25 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3556 FILED APRIL 16, 1997

*Senate concurred 4/21/97 (p. 1300)*

Bartz, Chair  
Redfern  
McCoy

SSB 9  
Commerce  
Succeeded By  
SF/HF 241

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMISSION ON  
UNIFORM STATE LAWS BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act adopting the uniform transfer on death security  
2 registration Act.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 633.800 SHORT TITLE -- RULES OF  
2 CONSTRUCTION.

3 1. This division shall be known and may be cited as the  
4 uniform transfer on death security registration Act.

5 2. The provisions of this division shall be liberally  
6 construed and applied to promote its underlying purposes and  
7 policy and to make uniform the laws with respect to the  
8 subject of its provisions among states enacting this uniform  
9 Act.

10 3. Unless displaced by the particular provisions of this  
11 division, the principles of law and equity supplement the  
12 provisions of this division.

13 Sec. 2. NEW SECTION. 633.801 DEFINITIONS.

14 As used in this division, unless the context otherwise  
15 requires:

16 1. "Beneficiary form" means a registration of a security  
17 which indicates the present owner of the security and the  
18 intention of the owner regarding the person who will become  
19 the owner of the security upon the death of the owner.

20 2. "Devisee" means any person designated in a will to  
21 receive a disposition of real or personal property.

22 3. "Heir" means a person, including the surviving spouse,  
23 who is entitled under the statutes of intestate succession to  
24 the property of a decedent.

25 4. "Register" means to issue a certificate showing the  
26 ownership of a certificated security or, in the case of an  
27 uncertificated security, to initiate or transfer an account  
28 showing ownership of the security.

29 5. "Registering entity" means a person who originates or  
30 transfers a security title by registration, including a broker  
31 maintaining security accounts for customers and a transfer  
32 agent or other person acting for or as an issuer of  
33 securities.

34 6. "Security" means a share, participation, or other  
35 interest in property, in a business, or in an obligation of an

1 enterprise or other issuer, including a certificated security,  
2 an uncertificated security, and a security account.

3 7. "Security account" means either of the following:

4 a. Any of the following:

5 (1) A reinvestment account associated with a security.

6 (2) A securities account with a broker.

7 (3) A cash balance in a brokerage account.

8 (4) Cash, interest, earnings, or dividends earned or  
9 declared on a security in an account, a reinvestment account,  
10 or a brokerage account, whether or not credited to the account  
11 before the owner's death.

12 b. A cash balance or other property held for or due to the  
13 owner of a security as a replacement for or product of an  
14 account security, whether or not credited to the account  
15 before the owner's death.

16 8. "State" includes any state of the United States, the  
17 District of Columbia, the Commonwealth of Puerto Rico, and any  
18 territory or possession subject to the legislative authority  
19 of the United States.

20 Sec. 3. NEW SECTION. 633.802 REGISTRATION IN BENEFICIARY  
21 FORM -- SOLE OR JOINT TENANCY OWNERSHIP.

22 Only an individual whose registration of a security shows  
23 sole ownership by one individual or multiple ownership by two  
24 or more individuals with a right of survivorship, rather than  
25 as tenants in common, may obtain registration in beneficiary  
26 form. Multiple owners of a security registered in beneficiary  
27 form shall hold as joint tenants with rights of survivorship,  
28 tenants by the entireties, or owners of community property  
29 held in survivorship form and not as tenants in common.

30 Sec. 4. NEW SECTION. 633.803 REGISTRATION IN BENEFICIARY  
31 FORM -- APPLICABLE LAW.

32 1. A security may be registered in beneficiary form if the  
33 form is authorized by this division or a similar statute of  
34 the state of any of the following:

35 a. The state of organization of the issuer or registering

1 entity.

2 b. The state of location of the registering entity's  
3 principal office.

4 c. The state of location of the office of the entity's  
5 transfer agent or the office of the entity making the  
6 registration.

7 d. The state of the address listed as the owner's at the  
8 time of registration.

9 2. A registration governed by the law of a jurisdiction in  
10 which this division or a similar statute is not in force or  
11 was not in force when a registration in beneficiary form was  
12 made is presumed to be valid and authorized as a matter of  
13 contract law.

14 Sec. 5. NEW SECTION. 633.804 ORIGINATION OF REGISTRATION  
15 IN BENEFICIARY FORM.

16 A security, whether evidenced by a certificate or account,  
17 is registered in beneficiary form when the registration  
18 includes a designation of a beneficiary to take the ownership  
19 at the death of the owner or the deaths of all multiple  
20 owners.

21 Sec. 6. NEW SECTION. 633.805 FORM OF REGISTRATION IN  
22 BENEFICIARY FORM.

23 Registration in beneficiary form may be shown by any of the  
24 following, appearing after the name of the registered owner  
25 and before the name of a beneficiary:

26 1. The words "transfer on death" or the abbreviation  
27 "TOD".

28 2. The words "pay on death" or the abbreviation "POD".

29 Sec. 7. NEW SECTION. 633.806 EFFECT OF REGISTRATION IN  
30 BENEFICIARY FORM.

31 The designation of a transfer on death or pay on death  
32 beneficiary on a registration in beneficiary form has no  
33 effect on ownership until the owner's death. A registration  
34 of a security in beneficiary form may be canceled or changed  
35 at any time by the sole owner or all surviving owners without

1 the consent of the beneficiary.

2 Sec. 8. NEW SECTION. 633.807 UNPAID CLAIMS.

3 1. If other assets of the estate of a deceased owner are  
4 insufficient, a transfer at death of a security registered in  
5 beneficiary form is not effective against the estate of the  
6 deceased owner to the extent needed to pay claims against the  
7 estate and statutory allowances to the surviving spouse and  
8 children.

9 2. A beneficiary of a transfer on death security  
10 registration under this chapter is liable to account to the  
11 personal representative of the deceased owner for the value of  
12 the security as of the time of the deceased owner's death to  
13 the extent necessary to discharge these unpaid claims and  
14 allowances. A proceeding against a beneficiary to assert  
15 liability shall not be commenced unless the personal  
16 representative has received a written demand by the surviving  
17 spouse, a creditor, a child, or a person acting for a minor  
18 child of the deceased owner. The proceeding must be commenced  
19 within one year after the death of the owner.

20 3. A beneficiary against whom a proceeding to account is  
21 brought may join a beneficiary of any other security  
22 registered in beneficiary form by the deceased owner as a  
23 party to the proceeding.

24 Sec. 9. NEW SECTION. 633.808 DEATH OF THE OWNER.

25 On the death of a sole owner or on the death of the sole  
26 surviving owner of multiple owners, the ownership of  
27 securities registered in beneficiary form passes to the  
28 beneficiary or beneficiaries who survive all owners. On proof  
29 of death of all owners and compliance with any applicable  
30 requirements of the registering entity, a security registered  
31 in beneficiary form may be reregistered in the name of the  
32 beneficiary or beneficiaries who survived the death of all  
33 owners. A registering entity shall provide notice to the  
34 department of revenue and finance of all reregistrations made  
35 pursuant to this division. The notice shall include the name,

1 address, and social security number of the descendant and all  
2 transferees. Until the division of the security after the  
3 death of all owners, multiple beneficiaries surviving the  
4 death of all owners hold their interests as tenants in common.  
5 If no beneficiary survives the death of all owners, the  
6 security belongs to the estate of the deceased sole owner or  
7 the estate of the last to die of multiple owners.

8 Sec. 10. NEW SECTION. 633.809 PROTECTION OF REGISTERING  
9 ENTITY.

10 1. A registering entity is not required to offer or to  
11 accept a request for security registration in beneficiary  
12 form. If a registration in beneficiary form is offered by a  
13 registering entity, the owner requesting registration in  
14 beneficiary form assents to the protections provided to the  
15 registering entity by this division.

16 2. By accepting a request for registration of a security  
17 in beneficiary form, the registering entity agrees that the  
18 registration in beneficiary form shall be implemented on the  
19 death of the deceased owner as provided in this division.

20 3. A registering entity is discharged from all claims to a  
21 security by the estate, creditors, heirs, or devisees of a  
22 deceased owner if the registering entity registers a transfer  
23 of the security in accordance with section 633.808 and does so  
24 in good faith reliance on all of the following:

- 25 a. The registration.
- 26 b. The provisions of this division.
- 27 c. Information provided by affidavit of the personal  
28 representative of the deceased owner, the surviving  
29 beneficiary, or the surviving beneficiary's representative, or  
30 other information available to the registering entity.

31 The protections of this division do not extend to a  
32 reregistration or payment made after a registering entity has  
33 received written notice from any claimant to any interest in  
34 the security objecting to implementation of a registration in  
35 beneficiary form. No other notice or other information

1 available to the registering entity affects its right to  
2 protection under this division.

3 4. The protection provided by this division to the  
4 registering entity of a security does not affect the rights of  
5 beneficiaries in disputes between themselves and other  
6 claimants to ownership of the transferred security, its value,  
7 or its proceeds.

8 Sec. 11. NEW SECTION. 633.810 NONTESTAMENTARY TRANSFER  
9 ON DEATH.

10 1. A transfer on death resulting from a registration in  
11 beneficiary form shall be effective by reason of the contract  
12 regarding the registration between the owner and the  
13 registering entity under the provisions of this division, and  
14 is not testamentary.

15 2. The provisions of this division do not limit the rights  
16 of creditors or security owners against beneficiaries and  
17 other transferees under other laws of this state.

18 Sec. 12. NEW SECTION. 633.811 TERMS, CONDITIONS, AND  
19 FORMS FOR REGISTRATION.

20 1. A registering entity offering to accept registrations  
21 in beneficiary form may establish the terms and conditions  
22 under which the registering entity receives requests for  
23 either of the following:

24 a. Registration in beneficiary form.

25 b. Implementation of registrations in beneficiary form,  
26 including requests for cancellation of previously registered  
27 transfer on death or pay on death beneficiary designations and  
28 requests for reregistration to effect a change of beneficiary.

29 2. a. The terms and conditions established by the  
30 registering entity may provide for proving death, avoiding or  
31 resolving problems concerning fractional shares, designating  
32 primary and contingent beneficiaries, and substituting a named  
33 beneficiary's descendants to take in place of the named  
34 beneficiary in the event of the beneficiary's death.

35 Substitution may be indicated by appending to the name of the

1 beneficiary the letters "LDPS" standing for "lineal  
2 descendants per stirpes". This designation shall substitute a  
3 deceased beneficiary's descendants who survive the owner for a  
4 beneficiary who fails to survive, with the descendants to be  
5 identified and to share in accordance with the law of the  
6 beneficiary's domicile at the owner's death governing  
7 inheritance by descendants of an intestate. Other forms of  
8 identifying beneficiaries who are to take on one or more  
9 contingencies, and rules for providing proofs and assurances  
10 needed to satisfy reasonable concerns by registering entities  
11 regarding conditions and identities relevant to accurate  
12 implementation of registrations in beneficiary form, may be  
13 contained in a registering entity's terms and conditions.

14 b. The following are illustrations of registrations in  
15 beneficiary form which a registering entity may authorize:

16 (1) Sole owner-sole beneficiary: OWNER'S NAME transfer on  
17 death (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

18 (2) Multiple owners-sole beneficiary: OWNERS' NAMES, as  
19 joint tenants or tenants in the entirety, transfer on death  
20 (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

21 (3) Multiple owners-primary and secondary (substituted)  
22 beneficiaries: OWNERS' NAMES as joint tenants or tenants in  
23 the entirety, transfer on death (TOD) or pay on death (POD) to  
24 BENEFICIARY'S NAME, or lineal descendants per stirpes.

25 Sec. 13. APPLICATION. The provisions of this division  
26 apply to registrations of securities in beneficiary form made  
27 before, on, or after the effective date of this Act, by  
28 decedents dying on or after the effective date of this Act.

29

#### EXPLANATION

30 This bill adopts the uniform transfer on death (TOD)  
31 security registration Act as approved and recommended by the  
32 national conference of commissioners on uniform state laws at  
33 its annual conference on July 28 - August 4, 1989. The bill  
34 allows the owner of securities to register the title in  
35 "transfer-on-death" (TOD) form. The bill provides that a

1 person (e.g., an issuer or broker) may transfer the securities  
2 directly to the designated transferee on the owner's death,  
3 passing outside the probate process. The registration  
4 provides a nonprobate transfer option without providing for  
5 joint tenancy form of title. The registration form does not  
6 affect the registered owner's control of the affected security  
7 during the lifetime of the owner. The bill provides for the  
8 right of survivorship by registered owners and the rights of  
9 beneficiaries to take the asset upon the death of the last  
10 surviving owner. An issuer is not required to implement the  
11 procedure, and the bill provides protections to the  
12 registering entity who acts in good faith.

13 Specifically, the bill includes the following new Code  
14 sections:

15 Section 633.800 provides for citation of the Act as the  
16 Uniform Transfer on Death Security Registration Act and for  
17 liberal construction of the Act to achieve uniformity among  
18 states enacting this Act.

19 Section 633.801 provides definitions of relevant terms used  
20 in TOD registration including "beneficiary form", "heir",  
21 "register", "registering entity", "security", "security  
22 account", and "state".

23 Terms such as "beneficiary form", "register", "registering  
24 entity", "security", and "security account" are new terms to  
25 the probate code and relate to securities products generally  
26 and the companies that sell them. The term "security" is  
27 defined similarly to the term defined in the Uniform  
28 Commercial Code (chapter 554) and is similar to section  
29 554.8102. The bill defines the term "heir" differently than  
30 provided in the probate code, to include a surviving spouse.

31 Section 633.802 provides that a sole owner or multiple  
32 owners of a security held in survivorship form may elect to  
33 register their ownership in beneficiary form. This  
34 registration is not available to persons holding as tenants in  
35 common.

1 Section 633.803 provides circumstances which must exist  
2 before a security may be registered in beneficiary form and  
3 recognized under the bill's provisions. Further, the bill  
4 provides general rights under Iowa contract law for Iowa  
5 residents who elect beneficiary form registration of products  
6 issued from or held in states that have not adopted the  
7 Uniform Transfer on Death Security Registration Act.

8 Section 633.804 defines how registration in beneficiary  
9 form takes place.

10 Section 633.805 adopts certain words and abbreviations  
11 which will show registration in beneficiary form. These are  
12 "transfer on death", "TOD", "pay on death", and "POD".

13 Section 633.806 explains that a designation of a "TOD" or  
14 "POD" beneficiary has no effect until death of the owner or  
15 the death of the last multiple owner and can be changed  
16 without consent of the beneficiary.

17 Section 633.807 provides for the payment of unpaid claims.

18 Section 633.808 provides that on proof of death and  
19 compliance with any requirements of the registering entity,  
20 the security may be reregistered in the name of the designated  
21 beneficiary. The bill requires the registering entity to  
22 provide notice of reregistrations to the department of revenue  
23 and finance. On the death of the owner, multiple  
24 beneficiaries will hold as tenants in common. The bill also  
25 provides guidelines for circumstances when no beneficiary  
26 survives.

27 Section 633.809 provides that a registering entity which  
28 elects to provide registration of securities in beneficiary  
29 form agrees to the conditions of this division. The  
30 registering entity is discharged from other claims to the  
31 security if it acts in good faith reliance on the registration  
32 and information provided by affidavit. The section provides  
33 that it does not provide protection to a registering entity  
34 which reregisters or distributes a security after receiving  
35 written notice of an objection to registration in beneficiary

1 form. The bill does not attempt to regulate the rights or  
2 claims of beneficiaries in disputes among themselves.

3 Section 633.810 provides that transfers made under the  
4 bill's provisions are not testamentary and do not limit the  
5 rights of creditors against beneficiaries.

6 Section 633.811 provides that the registering entity may  
7 define the precise forms and conditions for registration in  
8 beneficiary form. This includes examples of recommended  
9 registrations to be used by registering entities to resolve  
10 questions regarding fractional shares.

11 Section 13 of the bill provides for application of the  
12 provisions of the bill to registrations of securities in  
13 beneficiary form which predate or postdate adoption of the  
14 bill for decedents dying on or after the effective date of the  
15 bill.

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SENATE FILE 241

AN ACT

RELATING TO THE PROBATE CODE INCLUDING GUARDIANSHIPS AND  
CONSERVATORSHIPS AND ADOPTING THE UNIFORM TRANSFER ON  
DEATH SECURITY REGISTRATION ACT.

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

Section 1. Section 633.3, Code 1997, is amended by adding  
the following new subsection:

NEW SUBSECTION. 18A. FUNCTIONAL LIMITATIONS -- means the  
behavior or condition of a person which impairs the person's  
ability to care for the person's personal safety or to attend  
to or provide for necessities for the person.

Sec. 2. Section 633.3, subsection 22, Code 1997, is  
amended to read as follows:

22. INCOMPETENT ---~~includes means the condition of any~~  
person who has been adjudicated by a court ~~to be incapable of~~  
~~managing the person's property; or caring for the person's own~~  
~~self; or both to meet at least one of the following~~  
conditions:

a. To have a decision-making capacity which is so impaired  
that the person is unable to care for the person's personal  
safety or to attend to or provide for necessities for the  
person such as food, shelter, clothing, or medical care,  
without which physical injury or illness may occur.

b. To have a decision-making capacity which is so impaired  
that the person is unable to make, communicate, or carry out  
important decisions concerning the person's financial affairs.

c. To have a decision-making capacity which is so impaired  
that both paragraphs "a" and "b" are applicable to the person.

Sec. 3. Section 633.10, Code 1997, is amended by adding  
the following new subsection:

NEW SUBSECTION. 5. ACTIONS FOR ACCOUNTING. An action for  
an accounting against a beneficiary of a transfer on death  
security registration, pursuant to this chapter.

Sec. 4. NEW SECTION. 633.551A GUARDIANSHIPS AND  
CONSERVATORSHIPS -- GENERAL PROVISIONS.

1. The determination of incompetency of the proposed ward  
or ward and the determination of the need for the appointment  
of a guardian or conservator or of the modification or  
termination of a guardianship or conservatorship shall be  
supported by clear and convincing evidence.

2. The burden of persuasion is on the petitioner in an  
initial proceeding to appoint a guardian or conservator. In a  
proceeding to modify or terminate a guardianship or  
conservatorship, if the guardian or conservator is the  
petitioner, the burden of persuasion remains with the guardian  
or conservator. In a proceeding to terminate a guardianship  
or conservatorship, if the ward is the petitioner, the ward  
shall make a prima facie showing of some decision-making  
capacity. Once a prima facie showing is made, the burden of  
persuasion is on the guardian or conservator to show by clear  
and convincing evidence that the ward is incompetent.

3. In determining whether a guardianship or  
conservatorship is to be established, modified, or terminated,  
the district court shall consider if a limited guardianship or  
conservatorship pursuant to section 633.635 or 633.637 is  
appropriate. In making the determination, the court shall  
make findings of fact to support the powers conferred on the  
guardian or conservator.

4. In proceedings to establish, modify, or terminate a  
guardianship or conservatorship, in determining if the  
proposed ward or ward is incompetent as defined in section  
633.3, the court shall consider credible evidence from any  
source to the effect of third-party assistance in meeting the  
needs of the proposed ward or ward. However, neither party to  
the action shall have the burden to produce such evidence  
relating to third-party assistance.

Sec. 5. Section 633.552, subsection 2, paragraph a, Code 1997, is amended to read as follows:

~~a. --By reason of mental, physical or other incapacity is unable to make or carry out important decisions concerning the proposed ward's person or affairs, other than financial affairs:~~

a. Is a person whose decision-making capacity is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness might occur.

Sec. 6. Section 633.556, Code 1997, is amended to read as follows:

633.556 APPOINTMENT OF GUARDIAN.

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a guardian are proved by clear and convincing evidence, the court may appoint a guardian.

2. In all proceedings to appoint a guardian, the court shall consider the functional limitations of the proposed ward and whether a limited guardianship, as authorized in section 633.635, is appropriate.

3. Section 633.551A applies to the appointment of a conservator.

Sec. 7. Section 633.557, Code 1997, is amended to read as follows:

633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY PETITION.

1. A guardian may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a guardian's powers as provided in section 633.562.

2. In all proceedings to appoint a guardian, the court shall consider whether a limited guardianship, as authorized in section 633.635, is appropriate.

Sec. 8. Section 633.560, Code 1997, is amended to read as follows:

633.560 APPOINTMENT OF GUARDIAN ON A STANDBY BASIS.

A petition for the appointment of a guardian on a standby basis may be filed by any person under the same procedure and requirements as provided in sections 633.591 to 633.597, for appointment of standby conservator, insofar as applicable. In all proceedings to appoint a guardian, the court shall consider whether a limited guardianship, as authorized in section 633.635, is appropriate.

Sec. 9. Section 633.566, subsection 2, paragraph a, Code 1997, is amended to read as follows:

~~a. --By reason of mental, physical or other incapacity is unable to make or carry out important decisions concerning the proposed ward's financial affairs:~~

a. Is a person whose decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

Sec. 10. Section 633.570, Code 1997, is amended to read as follows:

633.570 APPOINTMENT OF CONSERVATOR.

1. If the allegations of the petition as to the status of the proposed ward and the necessity for the appointment of a conservator are proved by clear and convincing evidence, the court may appoint a conservator.

2. In all proceedings to appoint a conservator, the court shall consider the functional limitations of the person and whether a limited conservatorship, as authorized in section 633.637, is appropriate.

3. Section 633.551A applies to the appointment of a conservator.

Sec. 11. Section 633.572, Code 1997, is amended to read as follows:

633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY PETITION.

1. A conservator may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a conservator's powers as provided in section 633.576.

2. In all proceedings to appoint a conservator, the court shall consider whether a limited conservatorship, as authorized in section 633.637, is appropriate.

Sec. 12. Section 633.596, Code 1997, is amended to read as follows:

633.596 ~~TIME-OF CONSIDERATIONS --~~ APPOINTMENT OF CONSERVATOR.

~~At the time such a standby petition is filed under this part, the court, without any notice, may appoint the conservator nominated in such petition or may see the petition for hearing on such notice as the court may prescribe shall consider whether a limited conservatorship, as authorized in section 633.637, is appropriate.~~

Sec. 13. Section 633.635, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A Based upon the evidence produced at the hearing, the court may grant a guardian may be granted the following powers and duties which may be exercised without prior court approval:

Sec. 14. Section 633.635, subsections 3 and 4, Code 1997, are amended to read as follows:

3. The court may take into account all available information concerning the capabilities of the ward and any

additional evaluation deemed necessary, including the availability of third-party assistance to meet the needs of the ward or proposed ward, and may direct that the guardian have only a specially limited responsibility for the ward. In that event, the court shall state those areas of responsibility which shall be supervised by the guardian and all others shall be retained by the ward. The court may make a finding that the ward lacks the capacity to contract a valid marriage.

4. From time to time, upon a proper showing, the court may either modify the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard. Any modification that would be more restrictive or burdensome for the ward shall be based on clear and convincing evidence that the ward continues to fall within the categories of section 633.552, subsection 2, paragraph "a" or "b", and that the facts justify a modification of the guardianship. Section 633.551A applies to the modification proceedings. Any modification that would be less restrictive for the ward shall be based upon proof in accordance with the requirements of section 633.675.

Sec. 15. Section 633.637, Code 1997, is amended to read as follows:

633.637 POWERS OF WARD.

A ward for whom a conservator has been appointed shall not have the power to convey, encumber, or dispose of property in any manner, other than by will if the ward possesses the requisite testamentary capacity, unless the court determines that the ward has a limited ability to handle the ward's own funds. If the court makes such a finding, it shall specify to what extent the ward may possess and use the ward's own funds.

Any modification of the powers of the ward that would be more restrictive of the ward's control over the ward's financial affairs shall be based upon clear and convincing evidence and the burden of persuasion is on the conservator.

Any modification that would be less restrictive of the ward's control over the ward's financial affairs shall be based upon proof in accordance with the requirements of section 633.675.

Sec. 16. Section 633.675, subsection 3, Code 1997, is amended to read as follows:

3. A determination by the court that the ward is competent and capable of managing the ward's property and affairs; and that the continuance of the guardianship or conservatorship would not be in the ward's best interests no longer a person whose decision-making capacity is so impaired as to bring the ward within the categories of section 633.552, subsection 2, paragraph "a", or section 633.566, subsection 2, paragraph "a". In a proceeding to terminate a guardianship or a conservatorship, the ward shall make a prima facie showing that the ward has some decision-making capacity. Once the ward has made that showing, the guardian or conservator has the burden to prove by clear and convincing evidence that the ward's decision-making capacity is so impaired, as provided in section 633.552, subsection 2, paragraph "a", or section 633.566, subsection 2, paragraph "a", that the guardianship or conservatorship should not be terminated.

Sec. 17. NEW SECTION. 633.800 SHORT TITLE -- RULES OF CONSTRUCTION.

1. This division shall be known and may be cited as the uniform transfer on death security registration Act.

2. The provisions of this division shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of its provisions among states enacting this uniform Act.

3. Unless displaced by the particular provisions of this division, the principles of law and equity supplement the provisions of this division.

Sec. 18. NEW SECTION. 633.801 DEFINITIONS.

As used in this division, unless the context otherwise requires:

1. "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

2. "Devisee" means any person designated in a will to receive a disposition of real or personal property.

3. "Heir" means a person, including the surviving spouse, who is entitled under the statutes of intestate succession to the property of a decedent.

4. "Register" means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of the security.

5. "Registering entity" means a person who originates or transfers a security title by registration, including a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

6. "Security" means a security as defined in section 502.102.

7. "Security account" means either of the following:

a. Any of the following:

(1) A reinvestment account associated with a security.

(2) A securities account with a broker.

(3) A cash balance in a brokerage account.

(4) Cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death.

b. A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

8. "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

Sec. 19. NEW SECTION. 633.802 REGISTRATION IN BENEFICIARY FORM -- SOLE OR JOINT TENANCY OWNERSHIP.

Only an individual whose registration of a security shows sole ownership by one individual or multiple ownership by two or more individuals with a right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form shall hold as joint tenants with rights of survivorship, tenants by the entireties, or owners of community property held in survivorship form and not as tenants in common.

Sec. 20. NEW SECTION. 633.803 REGISTRATION IN BENEFICIARY FORM -- APPLICABLE LAW.

1. A security may be registered in beneficiary form if the form is authorized by this division or a similar statute of the state of any of the following:

- a. The state of organization of the issuer or registering entity.
- b. The state of location of the registering entity's principal office.
- c. The state of location of the office of the entity's transfer agent or the office of the entity making the registration.
- d. The state of the address listed as the owner's at the time of registration.

2. A registration governed by the law of a jurisdiction in which this division or a similar statute is not in force or was not in force when a registration in beneficiary form was made is presumed to be valid and authorized as a matter of contract law.

Sec. 21. NEW SECTION. 633.804 ORIGINATION OF REGISTRATION IN BENEFICIARY FORM.

A security, whether evidenced by a certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

Sec. 22. NEW SECTION. 633.805 FORM OF REGISTRATION IN BENEFICIARY FORM.

Registration in beneficiary form may be shown by any of the following, appearing after the name of the registered owner and before the name of a beneficiary:

1. The words "transfer on death" or the abbreviation "TOD".
2. The words "pay on death" or the abbreviation "POD".

Sec. 23. NEW SECTION. 633.806 EFFECT OF REGISTRATION IN BENEFICIARY FORM.

The designation of a transfer on death or pay on death beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all surviving owners without the consent of the beneficiary.

Sec. 24. NEW SECTION. 633.807 CLAIMS AGAINST A BENEFICIARY OF A TRANSFER ON DEATH SECURITY REGISTRATION.

1. If other assets of the estate of a deceased owner are insufficient to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and children, a transfer at death of a security registered in beneficiary form is not effective against the estate of the deceased sole owner, or if multiple owners, against the estate of the last owner to die, to the extent needed to pay debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and children.

2. A beneficiary of a transfer on death security registration under this division is liable to account to the

personal representative of the deceased owner for the value of the security as of the time of the deceased owner's death to the extent necessary to discharge debts, taxes, and expenses of administration, including statutory allowances to the surviving spouse and children. A proceeding against a beneficiary to assert liability shall not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a minor child of the deceased owner.

3. An action for an accounting under this section must be commenced within two years after the death of the owner.

4. A beneficiary against whom a proceeding is brought may elect to transfer to the personal representative the security registered in the name of the beneficiary if the beneficiary still owns the security, or the net proceeds received by the beneficiary upon disposition of the security by the beneficiary. Such transfer fully discharges the beneficiary from all liability under this section.

5. A beneficiary against whom a proceeding for an accounting is brought may join as a party to the proceeding a beneficiary of any other security registered in beneficiary form by the deceased owner.

6. Amounts recovered by the personal representative with respect to a security shall be administered as part of the deceased owner's estate.

7. A district court in this state shall have subject matter jurisdiction over a claim against a designated beneficiary brought by the decedent's personal representative or by a claimant to an interest in a security registered under this division. Any provision in a security registration form restricting jurisdiction over a claim, or restricting a choice of forum, to a forum outside this state is void.

8. In an action for an accounting brought under this section, where the deceased owner was domiciled in this state, the laws of this state shall apply.

Sec. 25. NEW SECTION. 633.808 DEATH OF THE OWNER.

On the death of a sole owner or on the death of the sole surviving owner of multiple owners, the ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. A registering entity shall provide notice to the department of revenue and finance of all reregistrations made pursuant to this division. The notice shall include the name, address, and social security number of the decedent and all transferees. Until the division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of multiple owners.

Sec. 26. NEW SECTION. 633.809 PROTECTION OF REGISTERING ENTITY.

1. A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections provided to the registering entity by this division.

2. By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration in beneficiary form shall be implemented on the death of the deceased owners as provided in this division.

3. A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if the registering entity registers a transfer of the security in accordance with section 633.808 and does so in good faith reliance on all of the following:

a. The registration.

b. The provisions of this division.

c. Information provided by affidavit of the personal representative of the deceased owner, the surviving beneficiary, or the surviving beneficiary's representative, or other information available to the registering entity.

The protections of this division do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this division.

4. The protection provided by this division to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the transferred security, its value, or its proceeds.

Sec. 27. NEW SECTION. 633.810 NONTESTAMENTARY TRANSFER ON DEATH.

1. A transfer on death resulting from a registration in beneficiary form shall be effective by reason of the contract regarding the registration between the owner and the registering entity under the provisions of this division, and is not testamentary.

2. The provisions of this division do not limit the rights of creditors or security owners against beneficiaries and other transferees under other laws of this state.

Sec. 28. NEW SECTION. 633.811 TERMS, CONDITIONS, AND FORMS FOR REGISTRATION.

1. A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which the registering entity receives requests for either of the following:

a. Registration in beneficiary form.

b. Implementation of registrations in beneficiary form, including requests for cancellation of previously registered transfer on death or pay on death beneficiary designations and requests for reregistration to effect a change of beneficiary.

2. a. The terms and conditions established by the registering entity may provide for proving death, avoiding or resolving problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the beneficiary the letters "LDPS" standing for "lineal descendants per stirpes". This designation shall substitute a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to survive, with the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

b. The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: OWNER'S NAME transfer on death (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

(2) Multiple owners-sole beneficiary: OWNERS' NAMES, as joint tenants or tenants in the entirety, transfer on death (TOD) or pay on death (POD) to BENEFICIARY'S NAME.

(3) Multiple owners-primary and secondary (substituted) beneficiaries: OWNERS' NAMES as joint tenants or tenants in the entirety, transfer on death (TOD) or pay on death (POD) to BENEFICIARY'S NAME, or lineal descendants per stirpes.

Sec. 29. APPLICATION. The provisions of this division apply to registrations of securities in beneficiary form made before, on, or after the effective date of this Act, by decedents dying on or after the effective date of this Act.

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 241, Seventy-seventh General Assembly.

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MARY PAT GUNDERSON  
Secretary of the Senate

Approved *May 26*, 1997

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TERRY E. BRANSTAD  
Governor