

*Referred back 4-7-97
Judiciary*

FILED MAR 17 1997

SENATE FILE 512
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 195)

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

A BILL FOR

1 An Act relating to estate issues by modifying the warranty by a
2 trustee, exemptions from execution and beneficiary
3 designations and transfer-upon-death provisions related to
4 pension and retirement accounts, jurisdiction of the probate
5 court, fees payable on certain trusts, claims against estates
6 for medical assistance payments, notice provisions relating to
7 claims against estates, termination of conservatorships, and
8 disclaimers made by beneficiaries.

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

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S.F. 512

1 Section 1. Section 614.14, subsection 4, paragraph b, Code
2 1997, is amended to read as follows:

3 b. That, to the knowledge of the trustee, the person
4 creating the trust was under no disability or infirmity at the
5 time the trust was created.

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

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

34 Sec. 3. Section 633.10, subsection 4, Code 1997, is
35 amended by adding the following new paragraph:

1 NEW PARAGRAPH. d. A trust that is administered solely or
2 jointly by an individual trustee or trustees is not subject to
3 the jurisdiction of the court unless jurisdiction is invoked
4 by a trustee or beneficiary, or if otherwise provided by the
5 governing instrument. Upon application of all trustees
6 administering a trust which is subject to the court's
7 jurisdiction, and following notice to beneficiaries as
8 provided in section 633.40, subsection 4, the court shall
9 release the trust from further jurisdiction unless one or more
10 beneficiaries object, on the condition that jurisdiction may
11 thereafter be invoked by a trustee or beneficiary. The
12 provisions of this paragraph shall be effective for
13 applications filed on or after July 1, 1997.

14 Sec. 4. Section 633.31, Code 1997, is amended by adding
15 the following new subsection:

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

21 Sec. 5. NEW SECTION. 633.357 CUSTODIAL INDIVIDUAL
22 RETIREMENT ACCOUNTS.

23 1. As used in this section, unless the context otherwise
24 requires:

25 a. "Custodial independent retirement account" means an
26 individual retirement account in accordance with section
27 408(a) of the Internal Revenue Code, the assets of which are
28 not held in trust.

29 b. "Designator" means a person entitled to designate the
30 beneficiary or beneficiaries of a custodial independent
31 retirement account.

32 2. The assets of a custodial independent retirement
33 account shall pass on or after the death of the designator of
34 the custodial independent retirement account to the
35 beneficiary or beneficiaries specified in the custodial

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

9 3. This section applies to a custodial independent
10 retirement account established and a beneficiary designation
11 made prior to, on, or after the effective date of this Act.
12 This section shall be considered to be declarative of the law
13 as the law existed immediately prior to the effective date of
14 this Act.

15 4. This section shall not be construed to imply that
16 assets or benefits that are payable upon the death of a person
17 to a beneficiary or beneficiaries designated in or pursuant to
18 a written arrangement not described in this section, other
19 than a will, are part of the person's probate estate or that
20 the arrangement is testamentary.

21 Sec. 6. Section 633.410, Code 1997, is amended to read as
22 follows:

23 633.410 LIMITATION ON FILING CLAIMS AGAINST DECEDENT'S
24 ESTATE.

25 All claims against a decedent's estate, other than charges,
26 whether due or to become due, absolute or contingent,
27 liquidated or unliquidated, founded on contract or otherwise,
28 are forever barred against the estate, the personal
29 representative, and the distributees of the estate, unless
30 filed with the clerk within the later to occur of four months
31 after the date of the second publication of the notice to
32 creditors or, as to each claimant whose identity is reasonably
33 ascertainable, one month after service of notice by ordinary
34 mail to the claimant's last known address. However, notice is
35 not required to be given by mail to any creditor whose claim

1 will be paid or otherwise satisfied during administration and
2 the personal representative may waive the limitation on filing
3 provided under this section. This section does not bar claims
4 for which there is insurance coverage, to the extent of the
5 coverage, ~~claims-for-debts-created-under-section-249A-5~~
6 ~~relating-to-the-recovery-of-medical-assistance-payments,~~ or
7 claimants entitled to equitable relief due to peculiar
8 circumstances.

9 Sec. 7. Section 633.440, Code 1997, is amended to read as
10 follows:

11 633.440 CONTENTS OF NOTICE OF DISALLOWANCE.

12 Such a notice of disallowance shall advise the claimant
13 that the claim has been disallowed and will be forever barred
14 unless the claimant shall within twenty days after the date of
15 mailing the notice, file a request for hearing on the claim
16 with the clerk, and mail a copy of such request for hearing to
17 the personal representative and the attorney of record, if
18 any, by certified mail.

19 Sec. 8. Section 633.681, Code 1997, is amended to read as
20 follows:

21 633.681 ASSETS OF MINOR WARD EXHAUSTED.

22 When the assets of a minor ward's conservatorship are
23 exhausted or consist of personal property only of an aggregate
24 value not in excess of four ten thousand dollars, the court,
25 upon application or upon its own motion, may terminate the
26 conservatorship and. The order for termination shall direct
27 the conservator to deliver the any property remaining after
28 the payment of allowed claims and expenses of administration
29 to the parent or other person entitled to the custody of the
30 minor ward, for the use of the ward, after payment of allowed
31 claims and expenses of administration a custodian under any
32 uniform transfers to minors Act. Such delivery shall have the
33 same force and effect as if delivery had been made to the ward
34 after attaining majority.

35 Sec. 9. Section 633.704, subsection 3, paragraph a, Code

1 1997, is amended to read as follows:

2 a. PASSAGE OF DISCLAIMED INTEREST OR PROPERTY. Unless the
3 transferor has otherwise provided, the property, interest, or
4 right disclaimed, and any future interest which is to take
5 effect in possession or enjoyment at or after the termination
6 of the interest or right disclaimed, descends or shall be
7 distributed as if the disclaimant has died prior to the date
8 of the transfer, or if the disclaimant is one designated to
9 take pursuant to a power of appointment exercised by
10 testamentary instrument, then as if the disclaimant has
11 predeceased the donee of the power unless the donee of the
12 power has otherwise provided. In every case, the disclaimer
13 relates back for all purposes to the date of the transfer. In
14 ~~the case of a disclaiming beneficiary under a will, other than~~
15 ~~a spouse, the property, interest, or right disclaimed passes~~
16 ~~to the heirs of the disclaimant unless from the terms of the~~
17 ~~transferor's will the intent is clear and explicit to the~~
18 ~~contrary, in which event the property, interest, or right~~
19 ~~disclaimed passes pursuant to the will.~~ In the case of a
20 disclaimer under a will by a spouse the property, interest, or
21 right disclaimed lapses unless from the terms of the
22 transferor's will the intent is clear and explicit to the
23 contrary.

24 EXPLANATION

25 This bill addresses the probate code.

26 Code section 614.14 is amended by limiting the warranty the
27 trustee makes regarding the trustor's condition at the time of
28 creation of the trust to that within the trustee's knowledge.

29 The bill adds to Code section 627.6 an exemption from
30 execution relating to a debtor's pension and retirement
31 accounts. A limitation is placed on the exemption for above
32 average contributions made two years prior to claiming the
33 exemption.

34 The bill adds a new paragraph to Code section 633.10
35 releasing certain testamentary trusts from the jurisdiction of

1 the court.

2 The bill amends Code section 633.31 to exempt certain
3 property transferred from a testamentary trust from certain
4 statutory fees, to prohibit a trust from being charged fees
5 after the related estate has already paid court costs.

6 The bill creates a new Code section 633.357 to provide that
7 the beneficiary designation by the owner of a custodial
8 independent retirement account controls the distribution of
9 the benefits and the account is not a part of the testamentary
10 disposition of a deceased owner subject to the terms of the
11 will of the owner unless the designated beneficiary of the
12 account is the estate of the owner.

13 The bill repeals a 1995 change to Code section 633.410 that
14 exempted claims based on medical assistance payments from the
15 timely filing limitation requirements.

16 The bill amends Code section 633.440 to require that a
17 request for a hearing on a notice of disallowance of a claim
18 against an estate must be mailed not only to the personal
19 representative, but also to any attorney of record.

20 The bill amends Code section 633.681 to permit a court to
21 terminate a conservatorship where the value of the property is
22 \$10,000 or less, an increase over the current statutory amount
23 of \$4,000. The bill provides that upon termination of
24 conservatorship, any property remaining after the payment of
25 allowed claims and expenses shall be delivered directly to a
26 custodian under any uniform transfer to minors Act.

27 The bill amends Code section 633.704 to remove language
28 regarding a disclaimer made by a beneficiary, to make it
29 consistent with the antilapse provisions of Code sections
30 633.273 and 633.274.

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SENATE FILE 512

S-3325

- 1 Amend Senate File 512 as follows:
2 1. Page 1, by inserting after line 33 the
3 following:
4 "Sec. ____ . NEW SECTION. 627.6A EXEMPTION FROM
5 EXECUTION FOR CHILD SUPPORT.
6 Notwithstanding the provisions of section 627.6, a
7 creditor to whom child support is owed may bring an
8 action pursuant to this section for satisfaction of a
9 child support order against assets which are otherwise
10 exempt. Such an action shall be commenced by filing a
11 petition for application of exempt assets in the same
12 manner as provided in chapter 598 for the filing of a
13 petition for modification. Upon notice as required
14 for the commencement of an original action and after a
15 hearing, the court may order that the exempt assets
16 provided for in section 627.6, in whole or in part,
17 are not exempt from the collection of the child
18 support obligation. Notwithstanding an action of the
19 state court under this section, a bankruptcy court may
20 make the determination that the otherwise exempt
21 assets provided for in section 627.6 are not exempt
22 from the claims of a child support creditor if such
23 creditor objects to the exemptions claimed by the
24 debtor in conformity with 11 U.S.C. § 522(1) and
25 federal rule of bankruptcy procedure 4003."
26 2. Title page, line 2, by inserting after the
27 word "trustee," the following: "exemption from
28 execution for child support,".
29 3. By renumbering as necessary.

By TOM VILSACK
DONALD B. REDFERN

S-3325 FILED APRIL 1, 1997

Redfern, Chair
Vilsack
McKibben

SSB 195
Judiciary
Succeeded By
SF HF 512

SENATE FILE
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIR-
PERSON MCKEAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
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11 plans, self-employed pension plans, Keogh plans, individual
12 retirement accounts, and similar plans for retirement
13 investments in the future authorized under federal law.
14 However, contributions to a plan shall not be exempt to the
15 extent that the contributions for the twenty-four month period
16 prior to the date the exemption is claimed or execution is
17 issued exceed ten thousand dollars in the aggregate over and
18 above the average contributions that had been made to the plan
19 by the debtor and the debtor's employer in the five tax years
20 ending prior to the twenty-four month period before the date
21 the exemption is claimed or the execution is issued. For the
22 purposes of this paragraph, contributions shall not include
23 such interest and any accumulation on that interest in any new
24 plans or contracts that are used to replace prior plans,
25 contracts, or policies that would have been excludable from a
26 bankruptcy estate or that the debtor could have claimed exempt
27 from execution at the time of the transfer. For purposes of
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34 jointly by an individual trustee or trustees is not subject to
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29 2. The assets of a custodial independent retirement
 30 account shall pass on or after the death of the designator of
 31 the custodial independent retirement account to the
 32 beneficiary or beneficiaries specified in the custodial
 33 independent retirement account agreement signed by the
 34 designator or designated by the designator in writing pursuant
 35 to the custodial independent retirement account agreement.

1 Assets that pass to a beneficiary pursuant to this section
2 shall not be considered part of the designator's probate
3 estate except to the extent that the designator's estate is a
4 beneficiary. The designation of a beneficiary shall not be
5 considered testamentary and does not have to be witnessed.

6 3. This section applies to a custodial independent
7 retirement account established and a beneficiary designation
8 made prior to, on, or after the effective date of this Act.
9 This section shall be considered to be declarative of the law
10 as the law existed immediately prior to the effective date of
11 this Act.

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25 are forever barred against the estate, the personal
26 representative, and the distributees of the estate, unless
27 filed with the clerk within the later to occur of four months
28 after the date of the second publication of the notice to
29 creditors or, as to each claimant whose identity is reasonably
30 ascertainable, one month after service of notice by ordinary
31 mail to the claimant's last known address. However, notice is
32 not required to be given by mail to any creditor whose claim
33 will be paid or otherwise satisfied during administration and
34 the personal representative may waive the limitation on filing
35 provided under this section. This section does not bar claims

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21 value not in excess of ~~four~~ ten thousand dollars, the court,
22 upon application or upon its own motion, may terminate the
23 conservatorship and. The order for termination shall direct
24 the conservator to deliver the any property remaining after
25 the payment of allowed claims and expenses of administration
26 ~~to the parent or other person entitled to the custody of the~~
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