



SF 2099 – Probate, Small Estates (LSB5191SV.2)

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Fiscal Note Version – As amended by House Amendment S-5142 and Senate Amendment to the House Amendment H-8338 and passed by the Senate (Revised Fiscal Impact)

Requestor – Representative Baltimore

Description

Senate File 2099 relates to probate and the administration of small estates. The Bill raises the maximum value of a small estate as defined under Iowa Code section [635.1](#) from \$100,000 to \$200,000. The Bill also makes various procedural changes to probate administration under Iowa Code chapter [635](#).

House Amendment [S-5142](#) adds a definition of “probate assets” to Iowa Code section [633.3](#). The House Amendment defines “probate assets” to mean a decedent’s property subject to administration by a personal representative.

Senate Amendment [H-8338](#) amends the effective dates and applicability provisions of the Bill. Amendment [H-8338](#) sets the effective date for the provisions amending Iowa Code sections [633.3](#), [635.2](#), [635.7](#), and [635.8](#) as July 1, 2018, and would apply to estates of decedents dying on or after July 1, 2018, and other estates opened previously and for which administration has not been completed as of July 1, 2018. The provision amending Iowa Code section [635.1](#) would take effect July 1, 2020, and would apply to estates of decedents dying on or after July 1, 2020.

Background

Under Iowa Code section [633.31\(2\)\(l\)](#), the clerk of court must charge and collect a fee of \$15 for services performed in the administration of a small estate of \$100,000 or less. If the estate is valued above \$100,000, the clerk collects the fees as prescribed in Iowa Code section [633.31\(2\)\(k\)](#). Iowa Code section [633.31\(2\)\(k\)](#) provides a sliding fee scale for services performed in connection with the settlement of an estate. The probate fees collected by clerks of court are deposited in the State General Fund pursuant to Iowa Code section [602.8108](#). The current total fee for costs associated with the settlement of an estate valued at \$200,000 is \$380, and \$280 for estates valued at \$150,000.

Currently, the term “probate assets” is not defined in Iowa Code chapter [633](#). According to several recent district court decisions, the following types of assets have been found to pass outside the administration of a decedent’s estate (and would not be considered property subject to administration by a personal representative):

- Annuities payable to named beneficiaries (Estate of Klinge, Hancock County).
- IRAs payable to named beneficiaries (Estate of Hill, Cerro Gordo County).
- Joint tenancy property (Estate of Daleske, Hardin County).
- Schedule G inter vivos trust assets.
- Real estate and property transferred prior to the death of the decedent listed in Schedule G (Estate of Mouw, Sioux County).

Recently, the Iowa Supreme Court decision in [Nance v. Iowa Department of Revenue](#)¹ recognized non-probate assets as interests in property that pass outside of the decedent’s probate estate to a designated beneficiary upon the decedent’s death.

Assumptions

- In FY 2017, there were 1,342 small estate cases filed. It is assumed there will be the same number of estates valued between \$100,000 and \$200,000, and the same number of small estates valued at \$100,000 or less, in future fiscal years.
- The number of small estate filings will eventually double if the small estate cap is raised to \$200,000.
- The estimated average value of estates between \$100,000 and \$200,000 is \$150,000.
- The total number of small estate filings and filings for estates valued between \$100,000 and \$200,000 will remain the same in FY 2020 and FY 2021.
- It is estimated to take at least two years for probate cases opened or converted from administration after July 1, 2020, to be closed and fees paid, and for the full fiscal impact to be known.

Fiscal Impact

[Senate File 2099](#) as amended is estimated to reduce fee revenues to the State General Fund within a year of implementation. The following chart shows an estimate of the fiscal impact beginning in FY 2020 and FY 2021:

Table 1

	Estimated Annual Impact on Fee Revenue					
	FY 2020			FY 2021		
	Current Law	Proposed Law SF 2099	Difference	Current Law	Proposed Law SF 2099	Difference
Fee Revenue	\$395,890	\$218,075	-\$177,815	\$395,890	\$40,260	-\$355,630

*For small estates and estates valued at \$100,000 - \$200,000.

It is important to note that the new definition of “probate assets” under House Amendment [S-5142](#) may have an even greater impact than estimated in **Table 1**. The impact of this definition will depend on several factors. The Judicial Branch has indicated that [SF 2099](#) as amended by House Amendment [S-5142](#) would not have an additional impact on fees collected from Iowa Code section [633.31\(2\)\(k\)](#) as long as:

- There is no additional movement among district courts to remove certain probate assets from the calculation of probate fees,
- The [Nance](#) decision does not have any influence on which assets are currently included in the calculation of probate assets, or
- The new definition of “probate assets” under House Amendment [S-5142](#) does not have an impact on what is included in the calculation of probate assets.

The Judicial Branch has indicated that if the factors listed above do occur, there could be a substantial reduction in General Fund revenue, possibly \$3.0 million to \$10.0 million, in the next few years due to the changes made in House Amendment [S-5142](#). If the factors do not occur, then the fiscal impact estimated in **Table 1** would apply instead.

¹ 908 N.W.2d 261, 268 (Iowa 2018)

Source

Iowa Judicial Branch

/s/ Holly M. Lyons

May 2, 2018

The fiscal note for this Bill was prepared pursuant to Joint Rule 17 and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.
