

Senate File 2232 - Enrolled

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AN ACT

RELATING TO THE IOWA TRUST CODE, INCLUDING THE CREATION
OF DIRECTED TRUSTS, THE TRANSFER OF TRUST ASSETS INTO
OTHER TRUSTS, AND REQUIREMENTS RELATED TO NOTICES TO
BENEFICIARIES.

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

Section 1. Section 633A.1102, Code 2020, is amended by
adding the following new subsections:

NEW SUBSECTION. 6A. "*Distribution trust director*" means any
person given authority by an instrument to exercise all or any
portion of the powers set forth in section 633A.4810. Except

as provided in the trust instrument, the distribution trust director shall have the same fiduciary duty and liability in the exercise or nonexercise of such powers as the trustee would in the absence of such directory powers.

NEW SUBSECTION. 6B. "*Excluded fiduciary*" means any fiduciary excluded from exercising certain powers under an instrument which powers may be exercised by the settlor, trust director, trust protector, or other persons designated in the instrument.

NEW SUBSECTION. 10A. "*Investment trust director*" means any person given authority by an instrument to exercise all or any portion of the powers set forth in section 633A.4809. Except as provided in the trust instrument, the investment trust director shall have the same fiduciary duty and liability in the exercise or nonexercise of such powers as the trustee would in the absence of such directory powers.

NEW SUBSECTION. 19A. "*Trust director*" means either an investment trust director or a distribution trust director.

NEW SUBSECTION. 19B. "*Trust protector*" means any person whose appointment as protector is provided for in the instrument. A trust protector shall not be considered to be acting in a fiduciary capacity except to the extent the governing instrument provides otherwise. However, a trust protector shall be considered to be acting in a fiduciary capacity to the extent that the trust protector exercises the authority or powers of a trust director.

Sec. 2. Section 633A.1102, subsection 7, Code 2020, is amended to read as follows:

7. "*Fiduciary*" includes a personal representative, executor, administrator, guardian, conservator, ~~and trustee,~~ trust director, and any other person designated as a fiduciary by the applicable instrument or this trust code.

Sec. 3. Section 633A.4207, subsection 2, Code 2020, is amended to read as follows:

2. ~~If In addition to any powers granted to a trustee, the terms of the trust may confer powers upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in~~

~~accordance with an exercise of the power unless the trustee knows the attempted exercise violates the terms of the trust or the trustee knows that the person holding the power is not competent~~ directors and trust protectors as set forth in sections 633A.4801 through 633A.4810. A person's status as a trust director or trust protector under Iowa law shall be determined on the basis of the powers granted and not on the title given to such person in the trust instrument.

Sec. 4. Section 633A.4207, subsection 3, Code 2020, is amended by striking the subsection.

Sec. 5. Section 633A.4213, Code 2020, is amended by adding the following new subsection:

NEW SUBSECTION. 8. Notwithstanding anything in this chapter to the contrary, if a trust instrument, or a trust protector authorized by the trust instrument, designates that a notice, accounting, or report may be delivered to the settlor or to a designated representative on behalf of a beneficiary prior to such beneficiary's twenty-fifth birthday, then, to the extent there is no conflict of interest between the representative and the beneficiary, all notices, accountings, and reports served on such representative with respect to such period will have the same effect as if such beneficiary had been served directly.

Sec. 6. NEW SECTION. 633A.4215 **Distributions in further trust.**

1. As used in this section:

a. "First trust" means a trust from which income or principal is transferred into the second trust.

b. "Restricted trustee" means a trustee of the first trust if such trustee is a beneficiary of the first trust or if such trustee has the power to change the trustees of the first trust within the meaning of subsection 5.

c. "Second trust" means a trust into which the income or principal of the first trust has been transferred.

2. Unless the terms of the governing instrument expressly provide otherwise, if a trustee of the first trust has discretion under the terms of a governing instrument to make a distribution of income or principal to or for the benefit of one or more beneficiaries of the first trust, whether or not

restricted by any standard, then the trustee, independently or with court approval, may appoint part or all of the income or principal subject to the trustee's discretion in favor of a trustee of a second trust under a governing instrument separate from the governing instrument of the first trust. Before exercising the trustee's discretion to appoint and distribute assets to a second trust, the trustee of the first trust shall determine whether the appointment is necessary or desirable after taking into account the purposes of the first trust, the terms and conditions of the second trust, and the consequences of the distribution. In addition, the following apply to all appointments made under this section:

a. The second trust may only have as beneficiaries one or more of the beneficiaries of the first trust to or for whom a discretionary distribution of income or principal may be made from the first trust, or to or for whom a distribution of income or principal may be made in the future from the first trust at a time or upon the happening of an event specified under the first trust.

b. No restricted trustee of the first trust may exercise such authority over the first trust to the extent that doing so could have any of the following effects:

(1) Benefiting the restricted trustee as a beneficiary of the first trust, unless the exercise of such authority is limited by an ascertainable standard based on or related to health, education, maintenance, or support.

(2) Removing restrictions on discretionary distributions to a beneficiary imposed by the governing instrument under which the first trust was created, except that a provision in the second trust which limits distributions by an ascertainable standard based on or related to the health, education, maintenance, or support of any such beneficiary is permitted, as is a distribution to a trust established pursuant to 42 U.S.C. §1396p(d)(4).

c. No restricted trustee of the first trust may exercise such authority over the first trust to the extent that doing so would have the effect of increasing the distributions that can be made from the second trust to the restricted trustees of the first trust or to a beneficiary who may change the trustees

of the first trust within the meaning of subsection 5 compared to the distributions that can be made to such trustee or beneficiary, as the case may be, under the first trust, unless the exercise of such authority is limited by an ascertainable standard based on or related to health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

d. The provisions of paragraphs "b" and "c" only apply to restrict the authority of a trustee if either a trustee, or a beneficiary who may change the trustee, is a United States citizen or domiciliary under the Internal Revenue Code, or the trust owns property that would be subject to United States estate or gift taxes if owned directly by such a person.

e. In the case of any trust contributions which have been treated as gifts qualifying for the exclusion from gift tax described in section 2503(b) of the Internal Revenue Code, by reason of the application of section 2503(c) of the Internal Revenue Code, the governing instrument for the second trust shall provide that the beneficiary's remainder interest shall vest no later than the date upon which such interest would have vested under the terms of the governing instrument for the first trust.

f. The exercise of such authority may not reduce any income interest of any income beneficiary of any of the following trusts:

(1) A trust for which a marital deduction has been taken for federal tax purposes under section 2056 or 2523 of the Internal Revenue Code, or for state tax purposes under any comparable provision of applicable state law.

(2) A charitable remainder trust under section 664 of the Internal Revenue Code.

(3) A grantor retained annuity or unitrust trust under section 2702 of the Internal Revenue Code.

g. The exercise of such authority does not apply to trust property subject to a presently exercisable power of withdrawal held by a trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions, unless after the exercise of such authority, the beneficiary's power of withdrawal is unchanged with respect to the trust property.

h. The exercise of such authority is not prohibited by a provision in the governing instrument that prohibits amendment or revocation of the trust.

i. Any appointment made by a trustee shall be considered a distribution by the trustee pursuant to the trustee's distribution powers and authority.

j. Notwithstanding the foregoing provisions of this subsection, the governing instrument of the second trust may grant a power of appointment to one or more of the beneficiaries of the second trust who are beneficiaries of the first trust. The power of appointment may include the power to appoint trust property to the holder of the power of appointment, the holder's creditors, the holder's estate, the creditors of the holder's estate, or any other person, whether or not that person is a trust beneficiary.

k. A permitted exercise of the trustee's discretion over the entire income and principal of the first trust may be made by modifying the first trust without an actual distribution of property, in which case the second trust is the modified first trust. A modification in further trust pursuant to this paragraph shall require the trustee to notify all beneficiaries of the trust, in writing, at least twenty days prior to the effective date of such exercise, but shall not be subject to the limitations of part 2 of subchapter II of this chapter.

1. This section applies to any trust administered under the laws of this state, including a trust whose governing jurisdiction is transferred to this state.

3. Any action that may not be taken by a trustee of the first trust by reason of the restrictions in subsection 2, paragraph "b", may instead be taken by any other trustee of the first trust who is not so restricted, or, if none, by the next available party who can be a successor trustee and who is not so restricted.

4. The second trust may be a trust created or administered under the laws of any jurisdiction, within or without the United States.

5. For the purposes of subsections 1 and 2, a beneficiary shall be considered to have the power to change the trustees if the beneficiary can, alone or with others, name such

beneficiary as a trustee or can remove a trustee and replace that trustee with a new trustee who is the beneficiary or who is related or subordinate, as defined in section 672 of the Internal Revenue Code, to the beneficiary.

6. The exercise of the power to distribute the income or principal of the trust under this section shall be by an instrument in writing, signed and acknowledged by the trustee, and filed with the records of the trust. The trustee of the first trust may notify the beneficiaries of the first trust, in writing, prior to the effective date of the trustee's exercise of the power under this section. A copy of the exercise of this authority and the second trust agreement shall satisfy this notice provision. For the purposes of this section, the term "*beneficiaries*" means those persons who would be entitled to notice and a copy of the first trust instrument under section 633A.4213.

7. The exercise of the power to distribute the income or principal of the trust under this section shall be considered the exercise of a power of appointment that shall not be exercised in favor of the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate.

8. The power under this section may not be exercised to suspend the power to alienate trust property or extend the first trust beyond the permissible period of any rule against perpetuities applicable to the first trust.

Sec. 7. NEW SECTION. 633A.4801 Governing instrument may provide trust director or trust protector with powers and immunities of trustee.

Any governing instrument providing for a trust director or trust protector may also provide such trust director or trust protector with some, none, or all of the rights, powers, privileges, benefits, immunities, or authorities available to a trustee under the law of this state or under the governing instrument. Unless the governing instrument provides otherwise, a trust director or trust protector has no greater liability to any person than would a trustee holding or benefiting from the rights, powers, privileges, benefits, immunities, or authority provided or allowed by the governing instrument to such trust director or trust protector.

Sec. 8. NEW SECTION. 633A.4802 **Liability limits of excluded fiduciary.**

1. An excluded fiduciary is not liable, either individually or as a fiduciary, for any of the following:

a. Any loss that results from compliance with a direction of the trust director, including any loss from the trust director breaching fiduciary responsibilities or acting beyond the trust director's scope of authority.

b. Any loss that results from a failure to take any action proposed by an excluded fiduciary that requires prior authorization of the trust director if that excluded fiduciary timely sought but failed to obtain that authorization.

c. Any loss that results from any action or inaction of the excluded fiduciary, except for gross negligence or willful misconduct, when the excluded fiduciary is required, pursuant to the trust agreement or any other reason, to assume the role of trust director or trust protector.

2. An excluded fiduciary is relieved of any obligation to review or evaluate any direction from a trust director or to perform investment or suitability reviews, inquiries, or investigations or to make recommendations or evaluations with respect to any investments to the extent the trust director had authority to direct the acquisition, disposition, or retention of the investment. If the excluded fiduciary offers recommendations or evaluations with respect to any investments to the trust director, trust protector, or any investment advisor selected by the investment trust director, such action may not be deemed to constitute an undertaking by the excluded fiduciary to monitor or otherwise participate in actions within the scope of the trust director's authority or to constitute any duty to do so.

3. An excluded fiduciary is relieved of any duty to communicate with, warn, or apprise any beneficiary or third party concerning instances in which the excluded fiduciary may have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trust director or trust protector.

4. Absent contrary provisions in the governing instrument, the actions of the excluded fiduciary pertaining to matters

within the scope of authority of the trust director or trust protector shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the governing instrument, and such administrative actions shall not be deemed to constitute an undertaking by the excluded fiduciary to monitor, participate, or otherwise take on any fiduciary responsibility for actions within the scope of authority of the trust director or trust protector. For purposes of this subsection, "*administrative actions*" shall include communications with the trust director or others and carrying out, recording, or reporting actions taken at the trust director's direction.

5. In an action against an excluded fiduciary pursuant to the provisions of this section, the burden to prove the matter by clear and convincing evidence is on the person seeking to hold the excluded fiduciary liable.

Sec. 9. NEW SECTION. 633A.4803 Death of settlor.

An excluded fiduciary may continue to follow the direction of the trust director upon the incapacity or death of the settlor if the instrument so allows.

Sec. 10. NEW SECTION. 633A.4804 Excluded fiduciary's liability for loss if trust protector appointed.

If an instrument appoints a trust protector, the excluded fiduciary is not liable for any loss resulting from any action taken upon the trust protector's direction.

Sec. 11. NEW SECTION. 633A.4805 Powers of trust protector.

1. The powers of a trust protector are as provided in the governing instrument and may be exercised or not exercised, in the best interests of the beneficiaries as a class, in the sole and absolute discretion of the trust protector and are binding on all other persons. The powers may include the following:

a. Modify or amend the trust instrument to achieve favorable tax status or respond to changes in the Internal Revenue Code, state law, or the rulings and regulations thereunder.

b. Increase or decrease the interests of any beneficiaries to the trust.

c. Modify the terms of any power of appointment granted by the trust. However, a modification or amendment shall

not grant a beneficial interest to any individual or class of individuals not specifically provided for under the trust instrument.

d. Remove and appoint a trustee, trust director, or other person designated in the governing trust instrument.

e. Terminate the trust.

f. Veto or direct trust distributions.

g. Change situs of the trust.

h. Change the governing law of the trust.

i. Appoint a successor trust protector.

j. Interpret terms of the trust instrument at the request of the trustee.

k. Advise the trustee on matters concerning a beneficiary.

l. Amend or modify the trust instrument to take advantage of laws governing restraints on alienation, distribution of trust property, or the administration of the trust.

m. Provide direction regarding notification of qualified beneficiaries pursuant to section 633A.4213.

n. Add to the trust an individual beneficiary or beneficiaries from a class of individuals identified in the governing instrument.

o. Add to the trust a charitable beneficiary or beneficiaries from a class of charities identified in the trust instrument.

p. Provide other powers in the governing instrument.

2. The powers referenced in subsection 1, paragraphs "e", "f", and "l", may be granted notwithstanding the provisions of sections 633A.2201 through 633A.2208.

Sec. 12. NEW SECTION. 633A.4806 Submission to court jurisdiction — effect on trust director or trust protector.

By accepting an appointment to serve as a trust director or trust protector of a trust that is subject to the laws of this state, the trust director or the trust protector submits to the jurisdiction of the courts of Iowa even if investment advisory agreements or other related agreements provide otherwise. The trust director or trust protector may be made a party to any action or proceeding if a decision or action of the trust director or trust protector affects a trust that is subject to the laws of this state.

Sec. 13. NEW SECTION. 633A.4807 Powers of trust protector incorporated by reference in will or trust instrument.

Any of the powers enumerated in section 633A.4805, as they exist at the time of the signing of a will by a testator or at the time of the signing of a trust instrument by a settlor, may be, by appropriate reference made thereto, incorporated in whole or in part in such will or trust instrument, by a clearly expressed intention of a testator of a will or settlor of a trust instrument.

Sec. 14. NEW SECTION. 633A.4808 Investment trust director or distribution trust director provided for in trust instrument.

A trust instrument governed by the laws of this state may provide for a person to act as an investment trust director or a distribution trust director with regard to investment decisions or discretionary distributions, respectively. Unless otherwise provided by the terms of the governing instrument, a person may simultaneously serve as a trust director and a trust protector.

Sec. 15. NEW SECTION. 633A.4809 Powers of investment trust director.

The powers of an investment trust director shall be provided in the trust instrument and may be exercised or not exercised, in the best interests of the beneficiaries as a class, in the sole and absolute discretion of the investment trust director and are binding on any other person and any other interested party, fiduciary, and excluded fiduciary. Unless the terms of the governing instrument provide otherwise, the investment trust director has the power to do all of the following:

1. Direct the trustee with respect to the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership thereof or rights therein of trust investments. These powers include the pledge or encumbrance of trust property, lending of trust assets, either secured or unsecured, at terms defined by the investment trust director, to any party including beneficiaries of the trust, and the investment and reinvestment of principal and income of the trust.

2. Vote proxies for securities held in trust.

3. Select one or more investment directors, managers, or

counselors, including the trustee, and delegate to them any of the investment trust director's powers.

4. Direct the trustee with respect to any additional powers over investment and management of trust assets provided in the governing instrument.

5. Direct the trustee as to the value of nonpublicly traded trust investments.

6. Direct the trustee as to any investment or management power referenced in sections 633A.4401 and 633A.4402.

Sec. 16. NEW SECTION. 633A.4810 Powers of distribution trust director.

The powers of a distribution trust director over any discretionary distributions of income or principal, including distributions pursuant to an ascertainable standard or other criteria and appointments pursuant to section 633A.4215, shall be provided in the trust instrument and may be exercised or not exercised, in the best interests of the beneficiaries as a class, in the sole and absolute discretion of the distribution trust director and are binding on any other person and any other interested party, fiduciary, and excluded fiduciary. Unless the terms of the document provide otherwise, the distribution trust director shall direct the trustee with regard to all discretionary distributions to beneficiaries and may direct appointments pursuant to section 633A.4215. The distribution trust director may also provide direction regarding notification of qualified beneficiaries pursuant to section 633A.4213.

Sec. 17. LEGISLATIVE INTENT. It is the intent of the general assembly that the provisions of this Act enacting section 433A.4215 is declaratory of the common law of this state permitting distributions in further trust and shall be liberally construed to effectuate the intent to maintain such common law authority. Section 433A.4215, as enacted by this Act, shall not be construed to abridge the right of any trustee who has power to distribute income or principal in further trust which arises under the terms of the first trust or any statute or common law applicable to such trust.

Sec. 18. CODE EDITOR DIRECTIVE. The Code editor may organize the provisions of this Act enacting sections 633A.4801

through 633A.4810 as a new part under subchapter IV in chapter 633A.

CHARLES SCHNEIDER
President of the Senate

PAT GRASSLEY
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2232, Eighty-eighth General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2020

KIM REYNOLDS
Governor