

February 21, 1969

SENATE FILE 289

Passed on File

*Judiciary 2-24, Pass as amended 3-26* By DeKOSTER and DENMAN  
*See " 4-30, Pass 5-1*

Passed Senate, Date *4-25-69* Passed House, Date *5-22-69*

Vote: Ayes *48* Nays *0* Vote: Ayes *104* Nays *0*

Approved .....

*Passed Senate as amended by House 5-23; 39-0.*

## A BILL FOR

- 1 An Act relating to various changes in the probate law.
- 2 *Be It Enacted by the General Assembly of the State of Iowa:*
- 3 Section 1. Section six hundred thirty-three point sixty-
- 4 three (633.63), Code 1966, is repealed and the following en-
- 5 acted in lieu thereof:
- 6 "Qualification of fiduciary—resident.
- 7 1. Any natural person of full age, who is a resident of
- 8 this state, is qualified to serve as a fiduciary, except the
- 9 following:
- 10 a. One who is a mental retardate, mentally ill, a chronic
- 11 alcoholic, or a spendthrift.
- 12 b. Any other person whom the court determines to be un-
- 13 suitable.
- 14 2. Banks and trust companies organized under the laws of
- 15 the United States or of the state of Iowa and authorized to
- 16 act in a fiduciary capacity in Iowa."
- 17 Sec. 2. Section six hundred thirty-three point sixty-
- 18 four (633.64), Code 1966, is repealed and the following en-
- 19 acted in lieu thereof:
- 20 "Qualification of fiduciary—nonresident. The court may,
- 21 upon application, appoint the following nonresidents as
- 22 fiduciaries:
- 23 1. Natural persons. A natural person who is a nonresident
- 24 of this state and who is otherwise qualified under the pro-
- 25 visions of section six hundred thirty-three point sixty-three

1 (633.63), provided a resident fiduciary is appointed to serve  
2 with such nonresident fiduciary; and provided further that  
3 the court, for good cause shown, may appoint such nonresident  
4 fiduciary to serve alone without the appointment of a resident  
5 fiduciary.

6 **2. Banks and trust companies.** Banks and trust companies  
7 organized under the laws of the United States or of another  
8 state and authorized to act in a fiduciary capacity in another  
9 state, if banks and trust companies of this state are per-  
10 mitted to act as fiduciary under similar conditions in the  
11 state where such bank or trust company is located.”

12 Sec. 3. Chapter six hundred thirty-three (633), Code  
13 1966, is amended by adding as a new section the following:

14 “633.71. **Legal effect of appointment.** By qualifying as  
15 fiduciary any person, resident or nonresident, submits him-  
16 self to the jurisdiction of the court making the appointment  
17 of the fiduciary and, in addition, shall be deemed to agree  
18 that:

19 1. All property coming into his hands is subject to the  
20 jurisdiction of the court wherein is pending the proceedings  
21 in which he is serving, and

22 2. He is subject to all orders entered by the court in  
23 the proceedings in which he is serving and that notices  
24 served upon him with respect thereto in compliance with the  
25 procedure prescribed by the Code shall have the same force  
26 and effect as if such service had been personally made upon  
27 him within the state.

28 3. He shall be subject to the jurisdiction of the courts  
29 of this state in all actions and proceedings against him  
30 arising from or growing out of his fiduciary relationship  
31 and activities and that the service of process in such actions  
32 and proceedings may be made upon him by serving the original  
33 notice upon him outside this state and that such service shall  
34 have the same force and effect as though the service had been  
35 personally made upon the fiduciary within this state.

1 4. The clerk of court wherein is pending the proceedings  
2 in which the fiduciary is serving as the lawful attorney or  
3 resident agent of such nonresident fiduciary upon whom service  
4 of process may be made whether such process be an order of the  
5 court entered in the proceedings in which the fiduciary is  
6 serving or an original notice of an action arising from or  
7 growing out of the fiduciary relationship and activities of  
8 the nonresident fiduciary and an agreement by the nonresident  
9 fiduciary that any order of court or any original notice of  
10 suit so served upon such clerk of court shall have the same  
11 force and effect as if served upon the nonresident fiduciary  
12 personally within the state of Iowa.”

13 Sec. 4. Chapter six hundred thirty-three (633), Code  
14 1966, is amended by adding as a new section the following:

15 “633.72. **Manner of service.** Service of an original  
16 notice of an action or process upon a nonresident fiduciary  
17 as herein provided may be made upon such fiduciary either by:

- 18 1. Delivering four copies of said notice or of said  
19 process to the clerk of court wherein the proceedings in  
20 which such fiduciary is serving are pending; or
- 21 2. Mailing four copies of said original notice or of  
22 said process by certified mail addressed to said clerk of  
23 court by his official title.

24 Upon receipt of said copies, such clerk of court shall  
25 immediately acknowledge and accept service thereof on behalf  
26 of the nonresident fiduciary by writing thereon or attaching  
27 thereto his written acknowledgment and acceptance of such  
28 service on behalf of such nonresident fiduciary, giving the  
29 date thereof.

30 The clerk of court shall forthwith:

- 31 1. File one copy in the action or proceedings to which  
32 it relates if pending in the court of which he is clerk, or  
33 transmit such notice or process and his acknowledgment and  
34 acceptance of the service thereof by certified mail to the  
35 clerk of court in which the action or proceedings is pending.

1     2. Mail one copy of such original notice or process and  
2 a copy of his written acknowledgment and acceptance of service  
3 thereof by certified mail to the nonresident fiduciary at the  
4 last address of such fiduciary as shown by the records in the  
5 proceedings in which such fiduciary is serving.

6     3. Mail one copy of such original notice or process and  
7 a copy of his written acknowledgment and acceptance of service  
8 thereof by certified mail to the attorney of record for such  
9 fiduciary.

10    4. Retain a copy of such original notice or process for  
11 his files.

12    Said service upon the clerk of court as herein provided  
13 shall have the same force and effect as if served upon the  
14 nonresident fiduciary personally within the state of Iowa on  
15 the date stated in said acknowledgment and acceptance of such  
16 service by the clerk of court."

17    Sec. 5. Chapter six hundred thirty-three (633), Code  
18 1966, is amended by adding as a new section the following:  
19    "633.103. **Certain corporate distributions.** In the absence  
20 of contrary provisions in the will or trust instrument, the  
21 following types of corporate distributions shall be treated  
22 as follows:

23    1. Commencing with such distributions to shareholders of  
24 record on or after July 1, 1969, corporate distributions of  
25 shares of the distributing corporation, including distribu-  
26 tions in the form of a share split or share dividend, are  
27 principal. A right to subscribe to shares or other securi-  
28 ties issued by the distributing corporation accruing to share-  
29 holders on account of their share ownership and the proceeds  
30 of any sale of the right are principal.

31    2. Distributions made from ordinary income by a regulated  
32 investment company or by a trust qualifying and electing to  
33 be taxed under federal law as a real estate investment trust  
34 are income. All other distributions made by the company or  
35 trust, including distributions from capital gains, deprecia-

1 tion, or depletion, whether in the form of cash or an option  
2 to take new shares or cash or an option to purchase additional  
3 shares, are principal.”

4 Sec. 6. Section six hundred thirty-six point one hundred  
5 seventy-two (633.172), Code 1966, is amended by adding at the  
6 end thereof the following new subsection and renumbering the  
7 existing section as subsection one (1).

8 “2. Unless otherwise required by the instrument creating  
9 the relationship, or by order of court, a corporate fiduciary  
10 shall not be required to provide any bond.”

11 Sec. 7. Section six hundred thirty-three point two hun-  
12 dred twenty-three (633.223), Code 1966, is repealed and the  
13 following enacted in lieu thereof:

14 **“Effect of adoption.**

15 1. A lawfully adopted person and his heirs shall inherit  
16 from and through the adoptive parents the same as a natural  
17 born child. The adoptive parents and their heirs shall in-  
18 herit from and through the adopted person the same as though  
19 he were a natural born child.

20 2. A lawful adoption shall extinguish the right of inherit-  
21 ance on the part of the adopted person from and through his  
22 natural parents and shall extinguish the right inheritance  
23 of the natural parents from and through the adopted person  
24 except as follows:

25 a. When the adopted person has attained his majority at  
26 the time of the adoption; or

27 b. When the adopted person is related to one or both of  
28 the adoptive parents within the fourth degree of consanguinity;  
29 or

30 c. When the adoptive parent is married to the natural  
31 parent of the adopted person; or

32 d. When the property would otherwise escheat.”

33 Sec. 8. Section six hundred thirty-three point three hun-  
34 dred nine (633.309), Code 1966, is amended as follows:

35 1. Strike from line one (1) the words “A petition” and

1 insert in lieu thereof the words "An action".

2 2. Strike from line two (2) the word "filed" and insert  
3 in lieu thereof the word "commenced".

4 Sec. 9. Section six hundred thirty-three point three hun-  
5 dred forty-two (633.342), Code 1966, is repealed and the fol-  
6 lowing enacted in lieu thereof:

7 **"Appointment of temporary administrator pending administra-**  
8 **tion.**

9 1. When, from any cause, probate of a will or administra-  
10 tion cannot be immediately granted, a temporary administrator  
11 may be appointed to collect, manage, preserve and dispose of  
12 the property of the deceased, as the court may prescribe, and  
13 no appeal from such appointment shall prevent his proceeding  
14 in the discharge of his duties.

15 2. Such temporary administrator shall make and file an  
16 inventory of the property of the deceased in the same manner  
17 as is required of personal representative, and shall preserve  
18 such property from injury, and may do all needful acts under  
19 the direction of the court, including the sale of property  
20 and the payment of claims as directed by the court. Upon the  
21 granting of administration, the powers of the temporary admin-  
22 istrator shall cease, and the administration of the estate  
23 shall be transferred to the personal representative to whom  
24 letters are granted."

25 Sec. 10. Section six hundred thirty-three point three hun-  
26 dred forty-three (633.343), Code 1966, is repealed and the  
27 following enacted in lieu thereof:

28 **"Appointment of temporary administrator during administra-**  
29 **tion.** At any time during the administration of an estate,  
30 the court, for good cause shown, may appoint a temporary ad-  
31 ministrator to carry out such orders of the court as may be  
32 necessary for the proper administration of such estate. No  
33 appeal from such appointment shall prevent the temporary ad-  
34 ministrator from proceeding in the discharge of his duties."

35 Sec. 11. Section six hundred thirty-three point three hun-

1 dred eighty-nine (633.389), Code 1966, is amended by adding  
2 at the end thereof the following:

3 “For the purposes of this section, the term ‘all persons  
4 interested’ shall include only distributees in the estate  
5 and persons who have requested notice as provided by this  
6 Code.”

7 Sec. 12. Section six hundred thirty-three point four hun-  
8 dred seventy-one (633.471), Code 1966, is repealed and the  
9 following enacted in lieu thereof:

10 “Right of retainer. When a distributee of an estate is  
11 indebted to the estate, or if a distributee takes as an heir  
12 of a deceased devisee indebted to the estate, the amount of  
13 such indebtedness, if due, or the present worth of the in-  
14 debtedness, if not due, shall be treated as a setoff and  
15 retained by the personal representative out of any testate  
16 or intestate property, real or personal, of the estate to  
17 which such distributee is entitled. In intestate estates,  
18 the personal representative shall have the same right of  
19 setoff and retainer against an heir whose ancestor was in-  
20 debted to the estate. The right of setoff and retainer shall  
21 be prior and superior to the rights of judgment creditors,  
22 heirs or assigns of such distributee and shall not be barred  
23 by the statute of limitations, nor by a discharge in bank-  
24 ruptcy.”

25 Sec. 13. Section six hundred thirty-three point four hun-  
26 dred ninety-six (633.496), Code 1966, is amended as follows:

27 1. Strike from lines five (5) and six (6) the word  
28 “attestation” and insert in lieu thereof the word “certi-  
29 ficate”.

30 2. Strike from line eight (8) the word “attestation” and  
31 insert in lieu thereof the word “certificate”.

#### EXPLANATION OF SENATE FILE 289

1. Section one is merely a restatement of present section 633.63 of the Code.

2. Section two permits nonresident banks and trust companies to be appointed as fiduciaries in the state.

3. Proposed section 633.71 is an additional section to the Probate Code and is intended to point out that the court appointing the fiduciary has jurisdiction over the assets in the estate and the person of the fiduciary. Section 633.72 is an adaptation of the "long-arm" statutes, particularly sections 491.15 and 617.3. This proposed section designates the clerks of court as the process agent for nonresident fiduciaries and provides the manner of service of original notice or court orders on the nonresident fiduciary.

4. Section 5 is an enactment of the "Massachusetts Rule" governing the allocation of principal and income in estates and trusts. The "Massachusetts Rule" has been adopted either by statute or court decision in a majority of the states. It is the more modern rule; it is clear and explicit in its meaning; and it is simple and easy to administer.

The adoption of this section would change the law of this state which was announced by the Supreme Court In Re: Butler Trust, 261 Iowa; 154 NW 2d 705, which decision adopted the so-called "Pennsylvania Rule."

5. Ordinarily bond of corporate fiduciaries is waived by the court under the provisions of section 633.175. Section 6 eliminates the necessity of obtaining a waiver in each instance, but permits the court to require the corporate fiduciary to furnish bond if deemed necessary.

6. Subsection 1 of section 7 is the same as present section 633.223 and deals with the right of the adopted person and the adoptive parents to inherit from each other. Subsection 2 of section 7 is new and eliminates the right of inheritance where a child is adopted by strangers. The right of inheritance would be preserved where the relationship of the adopting parents and the adopted person is as close as second cousins or great-grandchildren. Due to the fact that the records of the adoption are sealed and are not open to public inspection, many practical and technical problems arise, unless the right of inheritance is limited to situations which are known or easily ascertainable by the family. Nothing herein affects the rights of persons named in wills, trust or other instruments.

7. The purpose of section 8 is to conform to the wording of the Rules of Civil Procedure.

8. Section 9 restates present sections 633.342 and 633.343.

9. Section 10 provides for the appointment of a temporary administrator during the administration of the estate with such powers and duties as the court may specifically prescribe.

10. Section 11 is merely an amendment to clarify and define "all persons interested".

11. In section 12 the sentence "In intestate estates, the personal representative shall have the same right of setoff and retainer against an heir whose ancestor was indebted to the estate" is added for clarity.

- 1 Amend Senate File 289 as follows:  
2 1. Amend page 3 by striking lines 1 and 2 and inserting  
3 in lieu thereof the following: "4. The clerk of the  
4 court in which is pending the proceedings in which the  
5 fiduciary is serving is the lawful attorney or".  
6 2. Amend page 3, line 8, by adding a "." after the word  
7 "fiduciary" and striking the rest of line 8 and all of  
8 lines 9 through 12.

Filed - *Adopted 4-25*  
March 28, 1969

By DeKOSTER

- 1 Amend Senate File 289, page 3, line 2, as follows:  
2 1. By inserting after the word "serving" a ",".  
3 2. By striking the word "as" and inserting in lieu  
4 thereof the word "is".

Filed - *Withdrawn 4-25*  
March 26, 1969

By COMMITTEE ON JUDICIARY

#### HOUSE AMENDMENT TO SENATE FILE 289

- 1 Amend Senate File 289, section 7, page 5, by striking  
2 all of lines twenty-two (22) through thirty-two (32) and  
3 placing in lieu thereof the following:  
4 "natural parents, except that the adopted person may  
5 also inherit from his natural parent or parents in an  
6 intestate estate under the following circumstances:  
7 a. When the adopted person has attained his majority  
8 at the time of the adoption; or  
9 b. When the adopted person is related to one or both  
10 of the adoptive parents within the fourth degree of  
11 consanguinity.  
12 3. A lawful adoption shall extinguish the right of  
13 inheritance of the natural parent or parents from and  
14 through the adopted person except that the natural parent  
15 or parents may inherit from such adopted person in an  
16 intestate estate under the following circumstances:  
17 a. When the adopted person has attained his majority  
18 at the time of the adoption, and the adoptive parents are  
19 deceased at the time of the adopted person's death, or  
20 b. When the adopted person is related to one or both  
21 of the adoptive parents within the fourth degree of  
22 consanguinity."

*Senate  
concurred  
5-23*

1 Amend Senate File 289, section 7, page 5, by striking  
2 all of lines twenty-two (22) through thirty-two (32), and  
3 placing in lieu thereof the following: "natural parents,  
4 except that the adopted person may also inherit from his  
5 natural parent or parents in an intestate estate under  
6 the following circumstances:  
7 a. When the adopted person has attained his majority  
8 at the time of the adoption; or  
9 b. When the adopted person is related to one or both  
10 of the adoptive parents within the fourth degree of  
11 consanguinity.  
12 3. A lawful adoption shall extinguish the right of  
13 inheritance of the natural parent or parents from and through  
14 the adopted person except that the natural parent or parents  
15 may inherit from such adopted person in an intestate estate  
16 under the following circumstances:  
17 a. When the adopted person has attained his majority  
18 at the time of the adoption, and the adoptive parents are  
19 deceased at the time of the adopted person's death, or  
20 b. When the adopted person is related to one or both  
21 of the adoptive parents within the fourth degree of  
22 consanguinity."

Filed - *adopted 5-12*  
May 8, 1969

DOYLE of Woodbury  
HILL of Marshall