

*Substituted for
HF 2292 3-17-94
(P. 700)*

FILED MAR 7 1994

SENATE FILE 2307
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2093)

Passed Senate, Date ^(P. 623) 3-10-94 Passed House, Date ^(P. 1723) 4/15/94
Vote: Ayes 47 Nays 0 Vote: Ayes 98 Nays 0
Approved May 4, 1994

A BILL FOR

1 An Act relating to probate including the exclusion of revocable
2 trusts from the restrictions on agricultural land ownership,
3 the creation of standby conservatorships, and the creation and
4 establishment of separate trusts in certain circumstances.

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

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S.F. 2307

1 Section 1. Section 9H.1, Code Supplement 1993, is amended
2 by adding the following new subsections and renumbering
3 current subsections as necessary:

4 NEW SUBSECTION. 13A. "Grantor" means a natural person,
5 other than a nonresident alien as defined under section 9H.1,
6 who is the creator of a revocable trust or a trust.

7 NEW SUBSECTION. 17A. "Revocable trust" means a trust
8 which provides that the grantor retains the power to amend,
9 modify, or revoke the trust at any time prior to the death of
10 the grantor, regardless of whether, subsequent to the
11 execution of the revocable trust and at any time prior to
12 death, the grantor is legally competent to exercise the power
13 to amend, modify, or revoke the trust and regardless of when
14 the trust is created.

15 Sec. 2. Section 9H.1, subsection 18, Code Supplement 1993,
16 is amended to read as follows:

17 18. "Testamentary trust" means a trust created by devising
18 or bequeathing property in trust in a will as such terms are
19 used in the Iowa probate code. Testamentary trust includes a
20 revocable trust that has not been revoked prior to the
21 grantor's death.

22 Sec. 3. Section 9H.1, subsection 19, Code Supplement 1993,
23 is amended to read as follows:

24 19. "Trust" means a fiduciary relationship with respect to
25 property, subjecting the person by whom the property is held
26 to equitable duties to deal with the property for the benefit
27 of another person, which arises as a result of a manifestation
28 of an intention to create it. Trust does not include a person
29 acting in a fiduciary capacity, as defined in subsection 13,
30 of this section or a revocable trust. A trust includes a
31 legal entity holding property as trustee, agent, escrow agent,
32 attorney-in-fact, and in any similar capacity.

33 Sec. 4. Section 9H.4, unnumbered paragraph 1, Code
34 Supplement 1993, is amended to read as follows:

35 A corporation, limited liability company, or trust, other

1 than a family farm corporation, authorized farm corporation,
2 family farm limited liability company, authorized limited
3 liability company, family trust, authorized trust, revocable
4 trust, or testamentary trust shall not, either directly or
5 indirectly, acquire or otherwise obtain or lease any
6 agricultural land in this state. However, the restrictions
7 provided in this section shall not apply to the following:

8 Sec. 5. Section 9H.4, unnumbered paragraph 2, Code
9 Supplement 1993, is amended to read as follows:

10 A corporation, limited liability company, or trust, other
11 than a family farm corporation, authorized farm corporation,
12 family farm limited liability company, authorized limited
13 liability company, family trust, authorized trust, revocable
14 trust, or testamentary trust, violating this section shall be
15 assessed a civil penalty of not more than twenty-five thousand
16 dollars and shall divest itself of any land held in violation
17 of this section within one year after judgment. The courts of
18 this state may prevent and restrain violations of this section
19 through the issuance of an injunction. The attorney general
20 or a county attorney shall institute suits on behalf of the
21 state to prevent and restrain violations of this section.

22 Sec. 6. Section 9H.5, Code Supplement 1993, is amended by
23 adding the following new subsection:

24 NEW SUBSECTION. 4. As used in this section, "authorized
25 trust" does not include a revocable trust.

26 Sec. 7. Section 633.559, Code 1993, is amended to read as
27 follows:

28 633.559 PREFERENCE AS TO APPOINTMENT.

29 The parents of a minor, or either of them, if qualified and
30 suitable, shall be preferred over all others for appointment
31 as guardian. Preference shall then be given to any person, if
32 qualified and suitable, nominated as guardian for a minor
33 child by a will executed by the parent having custody of a
34 minor child, and any qualified and suitable person requested
35 by a minor fourteen years of age or older, or by standby

1 petition executed by a person having physical and legal
2 custody of a minor. Subject to these preferences, the court
3 shall appoint as guardian a qualified and suitable person who
4 is willing to serve in that capacity.

5 Sec. 8. Section 633.571, Code 1993, is amended to read as
6 follows:

7 633.571 PREFERENCE AS TO APPOINTMENT OF CONSERVATOR.

8 The parents of a minor, or either of them, if qualified and
9 suitable, shall be preferred over all others for appointment
10 as conservator. Preference shall then be given to any person,
11 if qualified and suitable, nominated as conservator for a
12 minor child by a will executed by the parent having custody of
13 a minor child, and any qualified and suitable person requested
14 by a minor fourteen years of age or older, or by standby
15 petition executed by a person having physical and legal
16 custody of a minor. Subject to these preferences, the court
17 shall appoint as conservator a qualified and suitable person
18 who is willing to serve in that capacity.

19 Sec. 9. NEW SECTION. 633.591A VOLUNTARY PETITION FOR
20 APPOINTMENT OF CONSERVATOR FOR A MINOR -- STANDBY BASIS.

21 A person having physical and legal custody of a minor may
22 execute a verified petition for the appointment of a standby
23 conservator of the proposed ward's property, upon the express
24 condition that the petition shall be acted upon by the court
25 only upon the occurrence of an event specified or the
26 existence of a described condition of the mental or physical
27 health of the petitioner, the occurrence of which event, or
28 the existence of which condition, shall be established in the
29 manner directed in the petition.

30 Sec. 10. NEW SECTION. 633.703A CREATION AND
31 ESTABLISHMENT OF SEPARATE TRUSTS.

32 1. In order to allow a trust to qualify as a marital
33 deduction trust for federal estate tax purposes, as a
34 qualified subchapter S trust for federal income tax purposes,
35 as separate trusts for federal generation-skipping tax

1 purposes, or for any other federal or state income, estate,
2 excise, or inheritance tax benefit or to facilitate the
3 administration of a trust or trusts, the governing instrument
4 of a trust may be amended as follows to permit the trust to be
5 divided into one or more separate trusts or be consolidated
6 with one or more other trusts into a single trust:

7 a. The trust governing instrument may be amended in any
8 respect by any method set forth in the instrument or provided
9 by law.

10 b. The trust governing instrument may also be amended by
11 the trustee with the written approval of the settlor, and the
12 living and competent beneficiaries entitled to income
13 designated in the governing instrument by name or by class.
14 The approval of a deceased or incapacitated settlor shall not
15 be required.

16 c. If one or more of the required approvals cannot be
17 obtained, the trustee may apply to the court that would have
18 jurisdiction over the trust for approval of the amendment.

19 2. For purposes of obtaining the approval of the
20 beneficiaries of a trust by agreement or by the court, the
21 doctrine of virtual representation shall apply.

22 3. The court shall approve the amendment unless it
23 determines that the proposed amendment will defeat or
24 substantially impair the accomplishment of the trust purposes.

25 4. The effective date of an amendment shall be specified
26 by the document, agreement, or order making or approving the
27 amendment and the jurisdiction of the court shall be limited
28 to the amendment proceeding unless the trust is being
29 administered subject to court supervision.

30 Sec. 11. NEW SECTION. 633.703B AVAILABILITY OF AMENDMENT
31 PROCEDURES.

32 Amendment procedures in this chapter shall be available to
33 trusts created in any manner, whether by trust agreement,
34 will, deed, or otherwise, and may be used on or after July 1,
35 1994, for any trust created before or after that date.

EXPLANATION

1
2 This bill defines revocable trusts for the purposes of
3 chapter 9H and amends sections 9H.4 and 9H.5 to exclude
4 revocable trusts from the restrictions on ownership of
5 agricultural land. The bill further provides that a person
6 having physical and legal custody of a minor may execute a
7 standby petition for appointing a conservator or guardian for
8 the minor. The standby petition would take effect upon the
9 occurrence of an event specified in the petition. Finally,
10 the bill authorizes the creation of separate trusts for the
11 same beneficiary in order to minimize federal or state
12 inheritance, estate, generation-skipping, corporate or
13 personal income, or excise taxes.

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SENATE FILE 2307

H-5611

1 Amend Senate File 2307, as passed by the Senate,
2 as follows:
3 1. Page 2, by inserting after line 25 the
4 following:
5 "Section 1. NEW SECTION. 633.5 NONESTATE
6 PROPERTY -- INSURANCE PROCEEDS.
7 A decedent's estate shall not include life
8 insurance proceeds, unless the proceeds are payable to
9 the decedent's estate.
10 Sec. _____. Section 633.197, Code 1993, is amended
11 by adding the following new unnumbered paragraph:
12 NEW UNNUMBERED PARAGRAPH. For purposes of this
13 section, the gross assets of the estate shall not
14 include life insurance proceeds, unless payable to the
15 decedent's estate."

By HALVORSON of Clayton
DODERER of Johnson

H-5611 FILED MARCH 23, 1994

adopted 4-15-94
HOUSE CLIP SHEET (P 1723)

MARCH 24, 1994

Page 71

SENATE FILE 2307

H-5612

1 Amend Senate File 2307, as passed by the Senate, as
2 follows:
3 1. Page 2, by inserting after line 25 the
4 following:
5 "Sec. _____. Section 633.197, Code 1993, is amended
6 to read as follows:
7 633.197 COMPENSATION.
8 1. Personal representatives shall be allowed such
9 reasonable fees as may be determined by the court for
10 services rendered, but not in excess of the following
11 commissions upon the gross value of the assets of the
12 estate listed in the probate inventory for Iowa
13 inheritance tax purposes, which shall be received as
14 full compensation for all ordinary services:
15 a. For the first one thousand dollars, six
16 percent.
17 b. For the overplus between one and five thousand
18 dollars, four percent.
19 c. For all sums over five thousand dollars, two
20 percent.
21 2. As used in this section, the value of the
22 assets of the estate shall be the total value of all
23 the assets of the estate listed in the probate
24 inventory for Iowa inheritance tax purposes less the
25 total amount of any debts incurred by the decedent."

By HALVORSON of Clayton

H-5612 FILED MARCH 23, 1994

WITHDRAWN

4-15-94

HOUSE AMENDMENT TO
SENATE FILE 2307

S-5663

1 Amend Senate File 2307, as passed by the Senate, as
2 follows:
3 1. Page 2, by inserting after line 25 the
4 following:
5 "Section 1. NEW SECTION. 633.5 NONESTATE
6 PROPERTY -- INSURANCE PROCEEDS.
7 A decedent's estate shall not include life
8 insurance proceeds, unless the proceeds are payable to
9 the decedent's estate.
10 Sec. ____ . Section 633.197, Code 1993, is amended
11 by adding the following new unnumbered paragraph:
12 NEW UNNUMBERED PARAGRAPH. For purposes of this
13 section, the gross assets of the estate shall not
14 include life insurance proceeds, unless payable to the
15 decedent's estate."

RECEIVED FROM THE HOUSE

S-5663 FILED APRIL 15, 1994
CONCURRED

4-15-94
(P.1299)

MS Kean
Giannetto
Redfern

SSB-2093
Judiciary

SENATE FILE 2307
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON STURGEON)

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

A BILL FOR

1 An Act relating to probate including the exclusion of revocable
2 trusts from the restrictions on agricultural land ownership,
3 the treatment of stepchildren for inheritance tax purposes,
4 the creation of standby conservatorships, and the creation and
5 establishment of separate trusts in certain circumstances.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 9H.1, Code Supplement 1993, is amended
2 by adding the following new subsections and renumbering
3 current subsections as necessary:

4 NEW SUBSECTION. 13A. "Grantor" means a natural person who
5 is the creator of a revocable trust or a trust.

6 NEW SUBSECTION. 17A. "Revocable trust" means a trust
7 which provides that the grantor retains the power to amend,
8 modify, or revoke the trust at any time prior to the death of
9 the grantor, regardless of whether, subsequent to the
10 execution of the revocable trust and at any time prior to
11 death, the grantor is legally competent to exercise the power
12 to amend, modify, or revoke the trust.

13 Sec. 2. Section 9H.1, subsection 18, Code Supplement 1993,
14 is amended to read as follows:

15 18. "Testamentary trust" means a trust created by devising
16 or bequeathing property in trust in a will as such terms are
17 used in the Iowa probate code. Testamentary trust includes a
18 revocable trust that has not been revoked prior to the
19 grantor's death.

20 Sec. 3. Section 9H.1, subsection 19, Code Supplement 1993,
21 is amended to read as follows:

22 19. "Trust" means a fiduciary relationship with respect to
23 property, subjecting the person by whom the property is held
24 to equitable duties to deal with the property for the benefit
25 of another person, which arises as a result of a manifestation
26 of an intention to create it. Trust does not include a person
27 acting in a fiduciary capacity, as defined in subsection 13,
28 ~~of this section~~ or a revocable trust. A trust includes a
29 legal entity holding property as trustee, agent, escrow agent,
30 attorney-in-fact, and in any similar capacity.

31 Sec. 4. Section 9H.4, unnumbered paragraph 1, Code
32 Supplement 1993, is amended to read as follows:

33 A corporation, limited liability company, or trust, other
34 than a family farm corporation, authorized farm corporation,
35 family farm limited liability company, authorized limited

1 liability company, family trust, authorized trust, revocable
2 trust, or testamentary trust shall not, either directly or
3 indirectly, acquire or otherwise obtain or lease any
4 agricultural land in this state. However, the restrictions
5 provided in this section shall not apply to the following:

6 Sec. 5. Section 9H.4, unnumbered paragraph 2, Code
7 Supplement 1993, is amended to read as follows:

8 A corporation, limited liability company, or trust, other
9 than a family farm corporation, authorized farm corporation,
10 family farm limited liability company, authorized limited
11 liability company, family trust, authorized trust, revocable
12 trust, or testamentary trust, violating this section shall be
13 assessed a civil penalty of not more than twenty-five thousand
14 dollars and shall divest itself of any land held in violation
15 of this section within one year after judgment. The courts of
16 this state may prevent and restrain violations of this section
17 through the issuance of an injunction. The attorney general
18 or a county attorney shall institute suits on behalf of the
19 state to prevent and restrain violations of this section.

20 Sec. 6. Section 9H.5, Code Supplement 1993, is amended by
21 adding the following new subsection:

22 NEW SUBSECTION. 4. As used in this section, "authorized
23 trust" does not include a revocable trust.

24 Sec. 7. Section 450.1, Code 1993, is amended by adding the
25 following new unnumbered paragraphs:

26 NEW UNNUMBERED PARAGRAPH. For purposes of this chapter,
27 "child" includes a legally adopted child, an illegitimate
28 child entitled to inherit under the laws of this state, and a
29 stepchild. "Stepchild" includes only the child of a person
30 who was married to the deceased person at the time of the
31 deceased person's death or the child of a person to whom the
32 deceased person was married and who died while married to the
33 deceased person.

34 NEW UNNUMBERED PARAGRAPH. For purposes of this chapter,
35 "lineal descendant of the deceased" includes descendants of a

1 stepchild of the deceased.

2 Sec. 8. Section 450.9, subsection 2, Code 1993, is amended
3 to read as follows:

4 2. Each ~~son-and-daughter,-including-legally-adopted-sons~~
5 ~~and-daughters,-or-illegitimate-sons-and-daughters-entitled-to~~
6 ~~inherit-under-the-law-of-this-state~~ child, fifty thousand
7 dollars.

8 Sec. 9. Section 450.10, subsection 1, unnumbered paragraph
9 1, Code 1993, is amended to read as follows:

10 When the property, interest, or income passes to the father
11 or mother, or to a child or lineal descendant of the decedent,
12 grantor, donor, or vendor, ~~including-a-legally-adopted-child~~
13 ~~or-illegitimate-child-entitled-to-inherit-under-the-laws-of~~
14 ~~this-state~~, the tax imposed shall be on the individual share
15 so passing in excess of the exemptions allowed as follows:

16 Sec. 10. Section 450.10, subsection 2, unnumbered
17 paragraph 1, Code 1993, is amended to read as follows:

18 When the property, or-any interest, therein or income
19 therefrom taxable under the provisions of this chapter passes
20 to the brother or sister, son-in-law, or daughter-in-law, or
21 ~~step-children~~, the rate of tax imposed on the individual share
22 so passing shall be as follows:

23 Sec. 11. NEW SECTION. 450C.1 CREATION AND ESTABLISHMENT
24 OF SEPARATE TRUSTS.

25 1. In order to allow a trust to qualify as a marital
26 deduction trust for federal estate tax purposes, as a
27 qualified subchapter S trust for federal income tax purposes,
28 as separate trusts for federal generation-skipping tax
29 purposes, or for any other federal or state income, estate,
30 excise, or inheritance tax benefit or to facilitate the
31 administration of a trust or trusts, the governing instrument
32 of a trust may be amended as follows to permit the trust to be
33 divided into one or more separate trusts or be consolidated
34 with one or more other trusts into a single trust:

35 a. The trust governing instrument may be amended in any

1 respect by any method set forth in the instrument or provided
2 by law.

3 b. The trust governing instrument may also be amended by
4 the trustee with the written approval of the settlor, and the
5 living and competent beneficiaries entitled to income
6 designated in the governing instrument by name or by class.
7 The approval of a deceased or incapacitated settlor shall not
8 be required.

9 c. If one or more of the required approvals cannot be
10 obtained, the trustee may apply to the court that would have
11 jurisdiction over the trust for approval of the amendment.

12 2. For purposes of obtaining the approval of the
13 beneficiaries of a trust by agreement or by the court, the
14 doctrine of virtual representation shall apply.

15 3. The court shall approve the amendment unless it
16 determines that the proposed amendment will defeat or
17 substantially impair the accomplishment of the trust purposes.

18 4. The effective date of an amendment shall be specified
19 by the document, agreement, or order making or approving the
20 amendment and the jurisdiction of the court shall be limited
21 to the amendment proceeding unless the trust is being
22 administered subject to court supervision.

23 5. A duly authorized and acting trustee of a trust subject
24 to the laws of this state is authorized without the need to
25 obtain court approval to establish or create separate trusts
26 for any shares of any beneficiaries designated or provided for
27 in the governing instrument in order to separate assets
28 constituting separate trusts. This action by the trustee may
29 be by separate written declaration of trust executed by the
30 trustee or a supplemental instrument to the governing
31 agreement executed by the acting trustee and the beneficiary,
32 if available and not under any disability, for whom the
33 separate trust is established.

34 Sec. 12. NEW SECTION. 450C.2 AVAILABILITY OF AMENDMENT
35 PROCEDURES.

1 Amendment procedures in this chapter shall be available to
2 trusts created in any manner, whether by trust agreement,
3 will, deed, or otherwise, and may be used on or after July 1,
4 1994, for any trust created before or after that date.

5 Sec. 13. Section 633.559, Code 1993, is amended to read as
6 follows:

7 633.559 PREFERENCE AS TO APPOINTMENT.

8 The parents of a minor, or either of them, if qualified and
9 suitable, shall be preferred over all others for appointment
10 as guardian. Preference shall then be given to any person, if
11 qualified and suitable, nominated as guardian for a minor
12 child by a will executed by the parent having custody of a
13 minor child, and any qualified and suitable person requested
14 by a minor fourteen years of age or older, or by standby
15 petition executed by a person having physical and legal
16 custody of a minor. Subject to these preferences, the court
17 shall appoint as guardian a qualified and suitable person who
18 is willing to serve in that capacity.

19 Sec. 14. Section 633.571, Code 1993, is amended to read as
20 follows:

21 633.571 PREFERENCE AS TO APPOINTMENT OF CONSERVATOR.

22 The parents of a minor, or either of them, if qualified and
23 suitable, shall be preferred over all others for appointment
24 as conservator. Preference shall then be given to any person,
25 if qualified and suitable, nominated as conservator for a
26 minor child by a will executed by the parent having custody of
27 a minor child, and any qualified and suitable person requested
28 by a minor fourteen years of age or older, or by standby
29 petition executed by a person having physical and legal
30 custody of a minor. Subject to these preferences, the court
31 shall appoint as conservator a qualified and suitable person
32 who is willing to serve in that capacity.

33 Sec. 15. NEW SECTION. 633.591A VOLUNTARY PETITION FOR
34 APPOINTMENT OF CONSERVATOR FOR A MINOR -- STANDBY BASIS.

35 A person having physical and legal custody of a minor may

1 execute a verified petition for the appointment of a standby
2 conservator of the proposed ward's property, upon the express
3 condition that the petition shall be acted upon by the court
4 only upon the occurrence of an event specified or the
5 existence of a described condition of the mental or physical
6 health of the petitioner, the occurrence of which event, or
7 the existence of which condition, shall be established in the
8 manner directed in the petition.

9 EXPLANATION

10 This bill defines revocable trusts for the purposes of
11 chapter 9H and amends sections 9H.4 and 9H.5 to exclude
12 revocable trusts from the restrictions on ownership of
13 agricultural land. The bill also makes changes to chapter 450
14 in order that certain stepchildren be treated the same as
15 children for inheritance tax purposes. The bill further
16 provides that a person having physical and legal custody of a
17 minor may execute a standby petition for appointing a
18 conservator or guardian for the minor. The standby petition
19 would take effect upon the occurrence of an event specified in
20 the petition. Finally, the bill authorizes the creation of
21 separate trusts for the same beneficiary in order to minimize
22 federal or state inheritance, estate, generation-skipping,
23 corporate or personal income, or excise taxes.

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SENATE FILE 2307

AN ACT

RELATING TO PROBATE INCLUDING THE EXCLUSION OF REVOCABLE TRUSTS FROM THE RESTRICTIONS ON AGRICULTURAL LAND OWNERSHIP, THE CREATION OF STANDBY CONSERVATORSHIPS, AND THE CREATION AND ESTABLISHMENT OF SEPARATE TRUSTS IN CERTAIN CIRCUMSTANCES.

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

Section 1. Section 9H.1, Code Supplement 1993, is amended by adding the following new subsections and renumbering current subsections as necessary:

NEW SUBSECTION. 13A. "Grantor" means a natural person, other than a nonresident alien as defined under section 9H.1, who is the creator of a revocable trust or a trust.

NEW SUBSECTION. 17A. "Revocable trust" means a trust which provides that the grantor retains the power to amend, modify, or revoke the trust at any time prior to the death of the grantor, regardless of whether, subsequent to the execution of the revocable trust and at any time prior to death, the grantor is legally competent to exercise the power to amend, modify, or revoke the trust and regardless of when the trust is created.

Sec. 2. Section 9H.1, subsection 18, Code Supplement 1993, is amended to read as follows:

18. "Testamentary trust" means a trust created by devising or bequeathing property in trust in a will as such terms are used in the Iowa probate code. Testamentary trust includes a revocable trust that has not been revoked prior to the grantor's death.

Sec. 3. Section 9H.1, subsection 19, Code Supplement 1993, is amended to read as follows:

19. "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation

of an intention to create it. Trust does not include a person acting in a fiduciary capacity, as defined in subsection 13, ~~of this section or a revocable trust.~~ A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact, and in any similar capacity.

Sec. 4. Section 9H.4, unnumbered paragraph 1, Code Supplement 1993, is amended to read as follows:

A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust, revocable trust, or testamentary trust shall not, either directly or indirectly, acquire or otherwise obtain or lease any agricultural land in this state. However, the restrictions provided in this section shall not apply to the following:

Sec. 5. Section 9H.4, unnumbered paragraph 2, Code Supplement 1993, is amended to read as follows:

A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust, revocable trust, or testamentary trust, violating this section shall be assessed a civil penalty of not more than twenty-five thousand dollars and shall divest itself of any land held in violation of this section within one year after judgment. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this section.

Sec. 6. Section 9H.5, Code Supplement 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 4. As used in this section, "authorized trust" does not include a revocable trust.

Sec. 7. NEW SECTION. 633.5 NONESTATE PROPERTY -- INSURANCE PROCEEDS.

A decedent's estate shall not include life insurance proceeds, unless the proceeds are payable to the decedent's estate.

Sec. 8. Section 633.197, Code 1993, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For purposes of this section, the gross assets of the estate shall not include life insurance proceeds, unless payable to the decedent's estate.

Sec. 9. Section 633.559, Code 1993, is amended to read as follows:

633.559 PREFERENCE AS TO APPOINTMENT.

The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian. Preference shall then be given to any person, if qualified and suitable, nominated as guardian for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older, or by standby petition executed by a person having physical and legal custody of a minor. Subject to these preferences, the court shall appoint as guardian a qualified and suitable person who is willing to serve in that capacity.

Sec. 10. Section 633.571, Code 1993, is amended to read as follows:

633.571 PREFERENCE AS TO APPOINTMENT OF CONSERVATOR.

The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as conservator. Preference shall then be given to any person, if qualified and suitable, nominated as conservator for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older, or by standby petition executed by a person having physical and legal custody of a minor. Subject to these preferences, the court shall appoint as conservator a qualified and suitable person who is willing to serve in that capacity.

Sec. 11. NEW SECTION. 633.591A VOLUNTARY PETITION FOR APPOINTMENT OF CONSERVATOR FOR A MINOR --STANDBY BASIS.

A person having physical and legal custody of a minor may execute a verified petition for the appointment of a standby

conservator of the proposed ward's property, upon the express condition that the petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition.

Sec. 12. NEW SECTION. 633.703A CREATION AND ESTABLISHMENT OF SEPARATE TRUSTS.

1. In order to allow a trust to qualify as a marital deduction trust for federal estate tax purposes, as a qualified subchapter S trust for federal income tax purposes, as separate trusts for federal generation-skipping tax purposes, or for any other federal or state income, estate, excise, or inheritance tax benefit or to facilitate the administration of a trust or trusts, the governing instrument of a trust may be amended as follows to permit the trust to be divided into one or more separate trusts or be consolidated with one or more other trusts into a single trust:

a. The trust governing instrument may be amended in any respect by any method set forth in the instrument or provided by law.

b. The trust governing instrument may also be amended by the trustee with the written approval of the settlor, and the living and competent beneficiaries entitled to income designated in the governing instrument by name or by class. The approval of a deceased or incapacitated settlor shall not be required.

c. If one or more of the required approvals cannot be obtained, the trustee may apply to the court that would have jurisdiction over the trust for approval of the amendment.

2. For purposes of obtaining the approval of the beneficiaries of a trust by agreement or by the court, the doctrine of virtual representation shall apply.

3. The court shall approve the amendment unless it determines that the proposed amendment will defeat or substantially impair the accomplishment of the trust purposes.

4. The effective date of an amendment shall be specified by the document, agreement, or order making or approving the amendment and the jurisdiction of the court shall be limited to the amendment proceeding unless the trust is being administered subject to court supervision.

Sec. 13. NEW SECTION. 633.703B AVAILABILITY OF AMENDMENT PROCEDURES.

Amendment procedures in this chapter shall be available to trusts created in any manner, whether by trust agreement, will, deed, or otherwise, and may be used on or after July 1, 1994, for any trust created before or after that date.

LEONARD L. BOSWELL
President of the Senate

HAROLD VAN MAANEN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2307, Seventy-fifth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 4, 1994, 1994

TERRY E. BRANSTAD
Governor