

3/5/96 Referred to W. & M.

FILED MAR 4 1996

SENATE FILE 2424
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2320)

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 certain exemptions
2 and tax rates for inheritance taxes, the jurisdiction of the
3 probate court on certain testamentary trusts, and fees payable
4 on certain trusts.

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

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S.F. 2424

1 Section 1. Section 450.1, Code 1995, is amended to read as
2 follows:

3 450.1 DEFINITIONS ~~---AUTHORITY-OF-COUNTY-ATTORNEY AND~~
4 CONSTRUCTION.

5 1. In the construction of this chapter ~~the word-"person"~~
6 ~~shall include:~~

7 a. "Child" includes a legally adopted child, an
8 illegitimate child entitled to inherit under the laws of this
9 state, and a stepchild.

10 b. "Lineal descendant of the decedent" includes
11 descendants of a stepchild of the deceased person, and persons
12 legally adopted by a descendant of the deceased person.

13 c. "Person" includes plural as well as singular, and
14 artificial as well as natural persons.

15 d. "Stepchild" shall include only the child of a person
16 who was married to the deceased person at the time of the
17 deceased person's death, or the child of a person to whom the
18 deceased person was married, which person died during the
19 marriage to the deceased person.

20 2. This chapter shall not be construed to confer upon a
21 county attorney authority to represent the state in any case,
22 and the county attorney shall represent the department of
23 revenue and finance only when especially authorized by ~~it~~ the
24 department to do so.

25 3. For purposes of this chapter, unless the context
26 otherwise requires:

27 a. "Internal Revenue Code" means the same as defined in
28 section 422.3.

29 b. "personal ~~Personal~~ representative" means an executor,
30 administrator, or trustee as each is defined in section 633.3
31 ~~and-"Internal Revenue Code"-means-the-same-as-defined-in~~
32 ~~section-422-3.~~

33 Sec. 2. Section 450.2, Code 1995, is amended by striking
34 the section and inserting in lieu thereof the following:

35 450.2 TAXABLE ESTATES AND PROPERTY.

1 The following estates and property and any interest in or
2 income from any of the following estates and property, which
3 pass from the decedent owner in any manner described in this
4 chapter, are subject to tax as provided in this chapter:

5 1. An estate or property that is within this state at the
6 death of the decedent owner, regardless of whether the estate
7 consists of real, personal, tangible, intangible, or mixed
8 property, and whether or not the decedent owner is an
9 inhabitant of this state.

10 2. An estate or property that is subject to the
11 jurisdiction of the courts of this state at the death of the
12 decedent owner.

13 3. Property that is brought into this state after the
14 death of the decedent and becomes subject to the jurisdiction
15 of the courts of this state, except intangible personal
16 property owned by the decedent as an inhabitant of another
17 state.

18 4. Property of a decedent owner domiciled in this state at
19 the time of death, that is outside of this state, except real
20 estate located outside of this state that passes in fee from
21 the decedent owner.

22 Sec. 3. Section 450.3, subsection 2, Code 1995, is amended
23 to read as follows:

24 2. By deed, grant, sale, gift or transfer made within
25 three years of the death of the grantor or donor, which is not
26 a bona fide sale for an adequate and full consideration in
27 money or money's worth and which is in excess of the annual
28 gift tax exclusion allowable for each donee under section
29 2503, subsections b and e of the Internal Revenue Code. If
30 both spouses consent, a gift made by one spouse to a person
31 who is not the other spouse is considered, for the purposes of
32 this subsection, as made one half by each spouse under the
33 same terms and conditions provided for in section 2513 of the
34 Internal Revenue Code. Net market value for the purpose of
35 this subsection is the net market value at the date of

1 transfer.

2 Sec. 4. Section 450.4, subsection 4, Code 1995, is amended
3 to read as follows:

4 4. Bequests for the care and maintenance of the cemetery
5 or burial lot of the decedent or the decedent's family, and
6 bequests not to exceed five-hundred one thousand dollars in
7 any estate of a decedent for the performance of a religious
8 service or services by some person regularly ordained,
9 authorized, or licensed by some religious society to perform
10 such service, which service or services are to be performed
11 for or in behalf of the testator or some person named in the
12 testator's last will.

13 Sec. 5. Section 450.4, subsection 5, Code 1995, is amended
14 by striking the subsection and inserting in lieu thereof the
15 following:

16 5. On that portion of the decedent's interest in a pension
17 or retirement plan that will be includable as net income as
18 defined in section 422.7, when paid to the beneficiary.

19 Sec. 6. Section 450.9, subsections 2 and 4, Code 1995, are
20 amended to read as follows:

21 2. ~~Each son-and-daughter,-including-legally-adopted-sons~~
22 ~~and-daughters,-or-biological-sons-and-daughters-entitled-to~~
23 ~~inherit-under-the-law-of-this-state~~ child, fifty thousand
24 dollars.

25 4. Any other lineal descendant or brother, sister, niece,
26 or nephew of the deceased decedent, fifteen thousand dollars.

27 Sec. 7. Section 450.10, subsection 1, unnumbered paragraph
28 1, Code 1995, is amended to read as follows:

29 When the property, interest, or income passes to the
30 father, or mother, or-to-a brother, sister, niece, nephew,
31 child, or other lineal descendant of the decedent, grantor,
32 donor, or vendor, ~~including-a-legally-adopted-child-or~~
33 ~~biological-child-entitled-to-inherit-under-the-laws-of-this~~
34 ~~state,~~ the tax imposed shall be on the individual share so
35 passing in excess of the exemptions allowed as follows:

1 Sec. 8. Section 450.10, subsection 2, unnumbered paragraph
2 1, Code 1995, is amended to read as follows:

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

8 Sec. 9. NEW SECTION. 450.11 COMPROMISE SETTLEMENT AND
9 WILL CONTEST.

10 The distribution of property of the decedent pursuant to a
11 compromise settlement, an order of court approving a
12 compromise settlement, or an order of court settling a will
13 contest or disposing of a will contest, when such distribution
14 is based on valid claims and the distribution is economically
15 fair based on such claims, shall be binding upon the
16 department as to recipients of property and valuation of
17 property interests passing from the decedent for a
18 determination of inheritance tax under this chapter.

19 Sec. 10. Section 450.20, unnumbered paragraph 1, Code
20 1995, is amended to read as follows:

21 ~~It~~ The department of revenue and finance shall also keep a
22 separate record of any deferred estate upon which the tax due
23 is not paid ~~within-fifteen-months-from~~ on or before the last
24 day of the ninth month after the death of the decedent,
25 showing substantially the same facts as are required in other
26 cases, and also showing:

27 Sec. 11. Section 614.14, subsection 4, paragraph b, Code
28 1995, is amended to read as follows:

29 b. That, to the knowledge of the trustee, the person
30 creating the trust was under no disability or infirmity at the
31 time the trust was created.

32 Sec. 12. Section 633.10, subsection 4, Code 1995, is
33 amended by adding the following new paragraph:

34 NEW PARAGRAPH. d. A trust that is administered solely or
35 jointly by an individual trustee or trustees is not subject to

1 the jurisdiction of the court unless jurisdiction is invoked
2 by a trustee or beneficiary, or if otherwise provided by the
3 governing instrument. Upon application of all trustees
4 administering a trust which is subject to the court's
5 jurisdiction, and following notice to beneficiaries as
6 provided in section 633.40, subsection 4, the court shall
7 release the trust from further jurisdiction unless one or more
8 beneficiaries object, on the condition that jurisdiction may
9 thereafter be invoked by a trustee or beneficiary. The
10 provisions of this paragraph shall be effective for
11 applications filed on or after July 1, 1996.

12 Sec. 13. Section 633.31, Code 1995, is amended by adding
13 the following new subsection:

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

19 Sec. 14. Section 633.440, Code 1995, is amended to read as
20 follows:

21 633.440 CONTENTS OF NOTICE OF DISALLOWANCE.

22 Such a notice of disallowance shall advise the claimant
23 that the claim has been disallowed and will be forever barred
24 unless the claimant shall within twenty days after the date of
25 mailing the notice, file a request for hearing on the claim
26 with the clerk, and mail a copy of such request for hearing to
27 the personal representative and the attorney of record, if
28 any, by certified mail.

29 Sec. 15. Section 633.681, Code 1995, is amended to read as
30 follows:

31 633.681 ASSETS OF MINOR WARD EXHAUSTED.

32 When the assets of a minor ward's conservatorship are
33 exhausted or consist of personal property only of an aggregate
34 value not in excess of ~~four~~ ten thousand dollars, the court,
35 upon application or upon its own motion, may terminate the

1 conservatorship and. The order for termination shall direct
2 the conservator to deliver the any property remaining after
3 the payment of allowed claims and expenses of administration
4 to the parent or other person entitled to the custody of the
5 minor ward, for the use of the ward, after payment of allowed
6 claims and expenses of administration a custodian under any
7 uniform transfers to minors Act. Such delivery shall have the
8 same force and effect as if delivery had been made to the ward
9 after attaining majority.

10 Sec. 16. Section 633.704, subsection 3, paragraph a, Code
11 Supplement 1995, is amended to read as follows:

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

34 EXPLANATION

35 This bill amends sections of the inheritance tax and

1 probate chapters.

2 Sections 1 through 10 of the bill address inheritance tax
3 issues. Section 1 adds directions for construction of the
4 terms "child", "lineal descendant", and "stepchild", to
5 clearly include stepchildren in consideration of inheritance
6 tax issues. Sections 6, 7, and 8 use these terms in place of
7 lists of certain descendants for exemption and rate of tax
8 purposes. Stepchildren are taxed equally with biological
9 children under this bill. In addition, brothers, sisters,
10 nieces and nephews of the decedent are given the same
11 exemptions and tax rates as children of the decedent.

12 Section 2 reorganizes and restates the list of estates and
13 property that are currently subject to inheritance tax, and
14 adds to the current law an express exception from the
15 inheritance tax for certain intangible personal property owned
16 by a resident of another state. Section 3 adds directions for
17 determining net market value (and, consequently, the taxable
18 amount) according to the date of transfer for certain taxable
19 property. Section 4 increases the limit for bequests for
20 religious services to \$1,000.

21 Section 5 strikes the current provision on exemptions for
22 annuities purchased under a retirement or pension plan, and
23 replaces it with a similar provision related to any type of
24 interest in a pension or retirement plan.

25 Section 9 adds a new section regarding the distribution of
26 property pursuant to a compromise settlement and its treatment
27 for inheritance tax purposes, which makes Iowa law consistent
28 with federal tax law on this issue. Section 10 changes the
29 time period for filings of records of deferred estates.

30 Sections 11 through 16 of the bill address probate code
31 sections. Section 11 changes the warranty the trustee makes
32 regarding the trustor's condition at the time of creation of
33 the trust. Section 12 adds a new paragraph releasing certain
34 testamentary trusts from the jurisdiction of the court, to
35 allow such the same opportunities as other types of trusts.

1 Section 13 exempts certain property transferred from a
2 testamentary trust from certain statutory fees, to prohibit a
3 trust from being charged fees after the estate has paid its
4 fees.

5 Section 14 requires a request for a hearing on a notice of
6 disallowance of a claim against an estate to be mailed no only
7 to the personal representative, but also to any attorney of
8 record. Section 15 permits a court to terminate a
9 conservatorship where the value of the property is \$10,000 or
10 less, an increase over the current statutory amount of \$4,000.

11 Section 16 removes language regarding a disclaimer made by a
12 beneficiary, to make it consistent with the antilapse
13 provisions of the Code in sections 633.273 and 633.274.

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SENATE FILE 2424

S-5365

1 Amend Senate File 2424 as follows:

2 1. Page 5, by inserting after line 28 the
3 following:

4 "Sec. ____ . Section 633.552, subsection 2,
5 paragraphs a and b, Code 1995, are amended by striking
6 the paragraphs and inserting in lieu thereof the
7 following:

8 a. A person whose decision-making capacity is so
9 impaired that at least one of the following conditions
10 exists:

11 (1) The personal safety of the person is at risk.

12 (2) The person is unable to attend to or provide
13 for necessities such as food, shelter, clothing, or
14 medical care, without which physical injury or illness
15 may occur.

16 b. A minor.

17 Sec. ____ . Section 633.556, Code 1995, is amended
18 to read as follows:

19 633.556 APPOINTMENT OF GUARDIAN.

20 1. If the allegations of the petition as to the
21 status of the proposed ward and the necessity for the
22 appointment of a guardian are proved by clear and
23 convincing evidence, the court may appoint a guardian.

24 2. In considering the petition for appointment of
25 a guardian, the court shall consider whether a limited
26 guardianship should be ordered pursuant to section
27 633.635, subsections 3 and 4.

28 Sec. ____ . Section 633.566, subsection 2,
29 paragraphs a and b, Code 1995, are amended by striking
30 the paragraphs and inserting in lieu thereof the
31 following:

32 a. A person whose decision-making capacity is so
33 impaired that the person is unable to make,
34 communicate, or carry out important decisions
35 concerning the person's own financial affairs.

36 b. A minor.

37 Sec. ____ . Section 633.570, Code 1995, is amended
38 to read as follows:

39 633.570 APPOINTMENT OF CONSERVATOR.

40 1. If the allegations of the petition as to the
41 status of the proposed ward and the necessity for the
42 appointment of a conservator are proved by clear and
43 convincing evidence, the court may appoint a
44 conservator.

45 2. In considering the petition for appointment of
46 a conservator, the court shall consider whether a
47 limited conservatorship should be ordered pursuant to
48 section 633.637.

49 Sec. ____ . Section 633.635, subsection 1,
50 unnumbered paragraph 1, Code 1995, is amended by

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Page 2

1 striking the paragraph and inserting in lieu thereof
2 the following:

3 Based upon the evidence produced at the hearing,
4 the court may grant a guardian authority to exercise
5 any of the following powers and duties:

6 Sec. ____ . Section 633.635, subsections 3 and 4,
7 Code 1995, are amended to read as follows:

8 3. The court may take into account all available
9 information concerning the capabilities of the ward,
10 the availability of a third party who may assist in
11 meeting the ward's needs, and any additional
12 evaluation deemed necessary, and may direct that the
13 guardian have only a specially limited responsibility
14 for the ward. In that event, the court shall state
15 those areas of responsibility which shall be
16 supervised by the guardian and all others shall be
17 retained by the ward. The court may make a finding
18 that the ward lacks the capacity to contract a valid
19 marriage.

20 4. From time to time, upon a proper showing, the
21 court may alter the respective responsibilities of the
22 guardian and the ward, after notice to the ward and an
23 opportunity to be heard. Any modification that would
24 be more restrictive of the ward's liberties shall be
25 based on clear and convincing evidence. Any
26 modification that would be less restrictive of the
27 ward's liberties shall be based upon consideration of
28 the factors set forth in section 633.675.

29 Sec. ____ . Section 633.637, Code 1995, is amended
30 to read as follows:

31 633.637 POWERS OF WARD.

32 1. A ward for whom a conservator has been
33 appointed shall not have the power to convey, encumber
34 or dispose of property in any manner, other than by
35 will if the ward possesses the requisite testamentary
36 capacity, unless the court determines that the ward
37 has a limited ability to handle the ward's own funds.
38 If the court makes such a finding, it shall specify to
39 what extent the ward may possess and use the ward's
40 own funds.

41 2. Any modification of the powers of the ward that
42 would be more restrictive of the ward's control of the
43 ward's property shall be based on clear and convincing
44 evidence. Any modification that would be less
45 restrictive shall be based upon consideration of the
46 factors set forth in section 633.675.

47 Sec. ____ . Section 633.675, subsection 3, Code
48 1995, is amended to read as follows:

49 3. A For a guardianship granted pursuant to
50 section 633.552, subsection 2, paragraph "a", or a

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Page 3

1 conservatorship granted pursuant to section 633.566,
2 subsection 2, paragraph "a", a determination by the
3 court that the ~~ward-is-competent-and-capable-of~~
4 ~~managing-the-ward's-property-and-affairs,-and-that-the~~
5 ~~continuance-of-the-guardianship-or-conservatorship~~
6 ~~would-not-be-in-the-ward's-best-interests~~ ward's
7 decision-making capacity is no longer so impaired.
8 In a proceeding to terminate such a guardianship or
9 a conservatorship, the ward must make a prima facie
10 showing that the ward has some decision-making
11 capacity. Once the ward has made the showing, the
12 guardian or conservator has the burden to prove by
13 clear and convincing evidence that the ward's
14 decision-making capacity continues to be so impaired
15 that the guardianship or conservatorship should not be
16 terminated, according to the standard set forth in
17 section 633.552, subsection 2, paragraph "a", or in
18 section 633.566, subsection 2, paragraph "a".
19 2. Title page, line 3, by inserting after the
20 word "trusts," the following: "certain standards used
21 in guardianship and conservatorship proceedings,".
22 3. By renumbering as necessary.

By TOM VILSACK

S-5365 FILED MARCH 18, 1996

SENATE FILE 2424

S-5467

1 Amend the amendment, S-5235, to Senate File 2424,
2 as follows:
3 1. Page 1, by striking lines 6 through 31.
4 2. Page 1, line 49, by inserting after the word
5 "property" the following: ", according to what the
6 court determines would be most consistent with the
7 trustor's original intent".
8 3. By renumbering as necessary.

By ELAINE SZYMONIAK

S-5467 FILED MARCH 21, 1996

SENATE FILE 2424

S-5235

1 Amend Senate File 2424 as follows:

2 1. Page 6, by inserting after line 9 the
3 following:

4 "Sec. ____ . NEW SECTION. 633.699A MODIFICATION OR
5 TERMINATION OF TESTAMENTARY TRUST.

6 1. On petition by a trustee or beneficiary, and
7 after notice to all interested parties as determined
8 by the court, the court may modify the provisions of a
9 testamentary trust or may terminate a testamentary
10 trust in whole or in part if the continuation of the
11 trust under its terms would defeat or substantially
12 impair the accomplishment of the purposes of the
13 trust, or if the purposes of the trust have been
14 fulfilled, or have become illegal or impossible to
15 fulfill.

16 a. The court may order the trustee to do acts that
17 are not authorized or are forbidden by the will
18 creating the trust, or may order that the trustee be
19 prohibited from performing acts that are required by
20 the terms of the trust.

21 b. The existence of a trust provision restraining
22 transfer of the beneficiary's interest does not
23 prevent application of this subsection.

24 c. If the court orders the termination of the
25 trust, disposition of all property shall be made
26 according to the will provisions that address the
27 disposition of the property in the event the trust is
28 terminated. However, if the will does not address the
29 disposition of the property in the event the trust is
30 terminated, the court shall determine the disposition
31 of the trust property.

32 2. On petition by a trustee or beneficiary, and
33 after notice to all interested parties as determined
34 by the court, if the court determines that the fair
35 market value of a testamentary trust has become so low
36 in relation to the cost of administration that
37 continuation of the trust under its existing terms
38 will defeat or substantially impair the accomplishment
39 of its purposes, the court may, in its discretion,
40 order termination of the trust, modification of the
41 trust, or appointment of a new trustee.

42 a. If the court orders the termination of the
43 trust, disposition of all property shall be made
44 according to the will provisions that address the
45 disposition of the property in the event the trust is
46 terminated. However, if the will does not address the
47 disposition of the property in the event the trust is
48 terminated, the court shall determine the disposition
49 of the trust property.

50 b. The existence of a trust provision restraining

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Page 2

1 transfer of the beneficiary's interest does not
2 prevent application of this subsection.

3 3. In the case of a charitable testamentary trust,
4 the attorney general shall be considered an interested
5 party under this section. This section shall not be
6 construed to limit intervention by the attorney
7 general according to section 633.303."

8 2. By renumbering as necessary.

By ELAINE SZYMONIAK

S-5235 FILED MARCH 6, 1996

Vilsack
Giannetto
Newhouse
McKean
Redfern

SSB-2320

Judiciary

SENATE FILE SF/HF 2424
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY CHAIR-
PERSON GIANNETTO)

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 certain exemptions
2 and tax rates for inheritance taxes, the jurisdiction of the
3 probate court on certain testamentary trusts, fees payable on
4 certain trusts, and the limitation on claims based on medical
5 assistance payments.

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

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1 Section 1. Section 450.1, Code 1995, is amended to read as
2 follows:

3 450.1 DEFINITIONS ~~---AUTHORITY-OF-COUNTY-ATTORNEY AND~~
4 CONSTRUCTION.

5 1. In the construction of this chapter the word-"person"
6 shall include:

7 a. "Child" includes a legally adopted child, an
8 illegitimate child entitled to inherit under the laws of this
9 state, and a stepchild.

10 b. "Lineal descendant of the decedent" includes
11 descendants of a stepchild of the deceased person, and persons
12 legally adopted by a descendant of the deceased person.

13 c. "Person" includes plural as well as singular, and
14 artificial as well as natural persons.

15 d. "Stepchild" shall include only the child of a person
16 who was married to the deceased person at the time of the
17 deceased person's death, or the child of a person to whom the
18 deceased person was married, which person died during the
19 marriage to the deceased person.

20 2. This chapter shall not be construed to confer upon a
21 county attorney authority to represent the state in any case,
22 and the county attorney shall represent the department of
23 revenue and finance only when especially authorized by it the
24 department to do so.

25 3. For purposes of this chapter, unless the context
26 otherwise requires:

27 a. "Internal Revenue Code" means the same as defined in
28 section 422.3.

29 b. "~~personal~~ Personal representative" means an executor,
30 administrator, or trustee as each is defined in section 633.3
31 and "~~Internal Revenue Code~~" means the same as defined in
32 section-422-3.

33 Sec. 2. Section 450.2, Code 1995, is amended by striking
34 the section and inserting in lieu thereof the following:

35 450.2 TAXABLE ESTATES AND PROPERTY.

1 The following estates and property and any interest in or
2 income from any of the following estates and property, which
3 pass from the decedent owner in any manner described in this
4 chapter, are subject to tax as provided in this chapter:

5 1. An estate or property that is within this state at the
6 death of the decedent owner, regardless of whether the estate
7 consists of real, personal, tangible, intangible, or mixed
8 property, and whether or not the decedent owner is an
9 inhabitant of this state.

10 2. An estate or property that is subject to the
11 jurisdiction of the courts of this state at the death of the
12 decedent owner.

13 3. Property that is brought into this state after the
14 death of the decedent and becomes subject to the jurisdiction
15 of the courts of this state, except intangible personal
16 property owned by the decedent as an inhabitant of another
17 state.

18 4. Property of a decedent owner domiciled in this state at
19 the time of death, that is outside of this state, except real
20 estate located outside of this state that passes in fee from
21 the decedent owner.

22 Sec. 3. Section 450.3, subsection 2, Code 1995, is amended
23 to read as follows:

24 2. By deed, grant, sale, gift or transfer made within
25 three years of the death of the grantor or donor, which is not
26 a bona fide sale for an adequate and full consideration in
27 money or money's worth and which is in excess of the annual
28 gift tax exclusion allowable for each donee under section
29 2503, subsections b and e of the Internal Revenue Code. If
30 both spouses consent, a gift made by one spouse to a person
31 who is not the other spouse is considered, for the purposes of
32 this subsection, as made one half by each spouse under the
33 same terms and conditions provided for in section 2513 of the
34 Internal Revenue Code. Net market value for the purpose of
35 this subsection is the net market value at the date of

1 transfer.

2 Sec. 4. Section 450.4, subsection 4, Code 1995, is amended
3 to read as follows:

4 4. Bequests for the care and maintenance of the cemetery
5 or burial lot of the decedent or the decedent's family, and
6 bequests not to exceed five-hundred one thousand dollars in
7 any estate of a decedent for the performance of a religious
8 service or services by some person regularly ordained,
9 authorized, or licensed by some religious society to perform
10 such service, which service or services are to be performed
11 for or in behalf of the testator or some person named in the
12 testator's last will.

13 Sec. 5. Section 450.4, subsection 5, Code 1995, is amended
14 by striking the subsection and inserting in lieu thereof the
15 following:

16 5. On that portion of the decedent's interest in a pension
17 or retirement plan that will be includable as net income as
18 defined in section 422.7, when paid to the beneficiary.

19 Sec. 6. Section 450.9, subsections 2 and 4, Code 1995, are
20 amended to read as follows:

21 2. Each ~~son-and-daughter,--including-legally-adopted-sons~~
22 ~~and-daughters,--or-biological-sons-and-daughters-entitled-to~~
23 ~~inherit-under-the-law-of-this-state~~ child, fifty thousand
24 dollars.

25 4. Any other lineal descendant of the ~~deceased~~ decedent,
26 fifteen thousand dollars.

27 Sec. 7. Section 450.10, subsection 1, unnumbered paragraph
28 1, Code 1995, is amended to read as follows:

29 When the property, interest, or income passes to the father
30 or mother, or to a child or lineal descendant of the decedent,
31 grantor, donor, or vendor, ~~including-a-legally-adopted-child~~
32 ~~or-biological-child-entitled-to-inherit-under-the-laws-of-this~~
33 ~~state,~~ the tax imposed shall be on the individual share so
34 passing in excess of the exemptions allowed as follows:

35 Sec. 8. Section 450.10, subsection 2, unnumbered paragraph

1 1, Code 1995, is amended to read as follows:

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

7 Sec. 9. NEW SECTION. 450.11 COMPROMISE SETTLEMENT AND
8 WILL CONTEST.

9 The distribution of property of the decedent pursuant to a
10 compromise settlement, an order of court approving a
11 compromise settlement, or an order of court settling a will
12 contest or disposing of a will contest, when such distribution
13 is based on valid claims and the distribution is economically
14 fair based on such claims, shall be binding upon the
15 department as to recipients of property and valuation of
16 property interests passing from the decedent for a
17 determination of inheritance tax under this chapter.

18 Sec. 10. Section 450.20, unnumbered paragraph 1, Code
19 1995, is amended to read as follows:

20 ~~†~~ The department of revenue and finance shall also keep a
21 separate record of any deferred estate upon which the tax due
22 is not paid ~~within-fifteen-months-from~~ on or before the last
23 day of the ninth month after the death of the decedent,
24 showing substantially the same facts as are required in other
25 cases, and also showing:

26 Sec. 11. Section 614.14, subsection 4, paragraph b, Code
27 1995, is amended to read as follows:

28 b. That, to the knowledge of the trustee, the person
29 creating the trust was under no disability or infirmity at the
30 time the trust was created.

31 Sec. 12. Section 633.10, subsection 4, Code 1995, is
32 amended by adding the following new paragraph:

33 NEW PARAGRAPH. d. A trust that is administered solely or
34 jointly by an individual trustee or trustees is not subject to
35 the jurisdiction of the court unless jurisdiction is invoked

1 by a trustee or beneficiary, or if otherwise provided by the
2 governing instrument. Upon application of all trustees
3 administering a trust which is subject to the court's
4 jurisdiction, and following notice to beneficiaries as
5 provided in section 633.40, subsection 4, the court shall
6 release the trust from further jurisdiction unless one or more
7 beneficiaries object, on the condition that jurisdiction may
8 thereafter be invoked by a trustee or beneficiary. The
9 provisions of this paragraph shall be effective for
10 applications filed on or after July 1, 1996.

11 Sec. 13. Section 633.31, Code 1995, is amended by adding
12 the following new subsection:

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

18 Sec. 14. Section 633.410, Code Supplement 1995, is amended
19 to read as follows:

20 633.410 LIMITATION ON FILING CLAIMS AGAINST DECEDENT'S
21 ESTATE.

22 All claims against a decedent's estate, other than charges,
23 whether due or to become due, absolute or contingent,
24 liquidated or unliquidated, founded on contract or otherwise,
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

1 for which there is insurance coverage, to the extent of the
2 coverage, ~~claims-for-debts-created-under-section-249A-5~~
3 ~~relating-to-the-recovery-of-medical-assistance-payments,~~ or
4 claimants entitled to equitable relief due to peculiar
5 circumstances.

6 Sec. 15. Section 633.440, Code 1995, is amended to read as
7 follows:

8 633.440 CONTENTS OF NOTICE OF DISALLOWANCE.

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

16 Sec. 16. Section 633.681, Code 1995, is amended to read as
17 follows:

18 633.681 ASSETS OF MINOR WARD EXHAUSTED.

19 When the assets of a minor ward's conservatorship are
20 exhausted or consist of personal property only of an aggregate
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
27 minor ward, for the use of the ward, after payment of allowed
28 claims and expenses of administration a custodian under any
29 uniform transfers to minors Act. Such delivery shall have the
30 same force and effect as if delivery had been made to the ward
31 after attaining majority.

32 Sec. 17. Section 633.704, subsection 3, paragraph a, Code
33 Supplement 1995, is amended to read as follows:

34 a. PASSAGE OF DISCLAIMED INTEREST OR PROPERTY. Unless the
35 transferor has otherwise provided, the property, interest, or

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

21 Sec. 18. RETROACTIVE APPLICABILITY. Section 14 of this
22 Act is retroactively applicable to July 1, 1995, and is
23 applicable on and after that date.

24 EXPLANATION

25 This bill amends sections of the inheritance tax and
26 probate chapters.

27 Sections 1 through 10 of the bill address inheritance tax
28 issues. Section 1 adds directions for construction of the
29 terms "child", "lineal descendant", and "stepchild", to
30 clearly include stepchildren in consideration of inheritance
31 tax issues. Sections 6, 7, and 8 use these terms in place of
32 lists of certain descendants for exemption and rate of tax
33 purposes. Stepchildren are taxed equally with biological
34 children under this bill.

35 Section 2 reorganizes and restates the list of estates and

1 property that are currently subject to inheritance tax, and
2 adds to the current law an express exception from the
3 inheritance tax for certain intangible personal property owned
4 by a resident of another state. Section 3 adds directions for
5 determining net market value (and, consequently, the taxable
6 amount) according to the date of transfer for certain taxable
7 property. Section 4 increases the limit for bequests for
8 religious services to \$1,000.

9 Section 5 strikes the current provision on exemptions for
10 annuities purchased under a retirement or pension plan, and
11 replaces it with a similar provision related to any type of
12 interest in a pension or retirement plan.

13 Section 9 adds a new section regarding the distribution of
14 property pursuant to a compromise settlement and its treatment
15 for inheritance tax purposes, which makes Iowa law consistent
16 with federal tax law on this issue. Section 10 changes the
17 time period for filings of records of deferred estates.

18 Sections 11 through 16 of the bill address probate code
19 sections. Section 11 changes the warranty the trustee makes
20 regarding the trustor's condition at the time of creation of
21 the trust. Section 12 adds a new paragraph releasing certain
22 testamentary trusts from the jurisdiction of the court, to
23 allow such the same opportunities as other types of trusts.
24 Section 13 exempts certain property transferred from a
25 testamentary trust from certain statutory fees, to prohibit a
26 trust from being charged fees after the estate has paid its
27 fees.

28 Section 14 repeals a change made last year that exempted
29 claims based on medical assistance payments from the
30 limitation on claims against an estate. Section 16 of the
31 bill makes this change retroactive to July 1, 1995, the date
32 when the 1995 change took effect.

33 Section 15 requires a request for a hearing on a notice of
34 disallowance of a claim against an estate to be mailed no only
35 to the personal representative, but also to any attorney of

1 record. Section 16 permits a court to terminate a
2 conservatorship where the value of the property is \$10,000 or
3 less, an increase over the current statutory amount of \$4,000.
4 Section 17 removes language regarding a disclaimer made by a
5 beneficiary, to make it consistent with the antilapse
6 provisions of the Code in sections 633.273 and 633.274.

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