

Baudler, Chair
Larson
Parmenter

Sub
SE 02518

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON JUDICIARY
BILL BY CHAIRPERSON LARSON)

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

A BILL FOR

1 An Act relating to probate law, including assessment of court
2 costs, certain notification provisions, certain distributions
3 to minors, the effect of dissolution of marriage on will
4 provisions, and powers of attorney.

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

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1 Section 1. Section 633.31, subsection 3, Code Supplement
2 1999, is amended to read as follows:

3 3. The fee set forth in subsection 2, paragraph "k", shall
4 not be charged on any ~~property-transferred-to-a-testamentary~~
5 ~~trust from-an-estate-that-has-been-administered-in-this-state~~
6 ~~and-for-which-court-costs-have-been-assessed-and-paid.~~

7 Sec. 2. Section 633.32, subsections 1 and 2, Code 1999,
8 are amended to read as follows:

9 1. On ~~May~~ June 1 and ~~November~~ December 1 of each year, the
10 clerk shall notify the fiduciary and the fiduciary's attorney
11 of any delinquent inventories or reports due by law in any
12 pending estate, trust, guardianship, or conservatorship, and
13 that unless such delinquent inventory or report is filed
14 within sixty days thereafter, the matter shall be reported to
15 the presiding judge. If the delinquent inventory is not filed
16 within the time so specified, the fiduciary will be subject to
17 removal under the provisions of section 633.65 of this Code.

18 2. On ~~July~~ August 1 and ~~January~~ February 1 of each year,
19 the clerk shall report to the presiding judge all delinquent
20 inventories or reports in estates, trusts, guardianships or
21 conservatorships on which such notice has been given and no
22 report or inventory has been filed in response to the notice.

23 Sec. 3. Section 633.108, Code 1999, is amended to read as
24 follows:

25 633.108 SMALL DISTRIBUTIONS TO MINORS -- PAYMENT.

26 Whenever a minor becomes entitled under the terms of a will
27 to a bequest or legacy, to a share of the estate of an
28 intestate, or to a beneficial interest in a trust fund upon
29 the distribution of the trust fund, and the value of the
30 bequest, legacy, share, or interest does not exceed the sum of
31 ten thousand dollars, ~~and-a-conservator-for-the-minor-has-not~~
32 ~~been-appointed,-the-court-having-jurisdiction-of-the~~
33 ~~distribution-of-the-funds-may,-in-its-discretion,-upon-the~~
34 ~~application-of-the-fiduciary,-enter-an-order-authorizing-the~~
35 ~~fiduciary-to-pay-the-bequest,-legacy,-share,-or-interest~~ the

1 personal representative or trustee may pay the bequest,
2 legacy, share, or interest to a custodian under any uniform
3 transfers to minors Act. Receipt by the custodian, when
4 presented to the court or filed with the report of
5 distribution of the fiduciary, shall have the same force and
6 effect as though the payment had been made to a duly appointed
7 and qualified conservator for the minor.

8 Sec. 4. Section 633.271, Code 1999, is amended to read as
9 follows:

10 633.271 EFFECT OF DIVORCE OR DISSOLUTION.

11 If after making a will the testator is divorced or the
12 marriage is dissolved, all provisions in the will in favor of
13 the testator's spouse, including but not limited to
14 dispositions, appointments relating to property, and
15 nominations to serve in any fiduciary or representative
16 capacity, are thereby revoked. In the event the testator and
17 spouse remarry each other, the provisions of the will revoked
18 by the divorce or dissolution of marriage shall be reinstated
19 unless otherwise revoked by the testator.

20 Sec. 5. Section 633.304, unnumbered paragraph 2, Code
21 1999, is amended to read as follows:

22 As used in this section, "heir" means only such person as
23 would, in an intestate estate, be entitled to a share under
24 section 633.219, subsection 1, 2, or 3, or 4 of-section
25 633-219.

26 Sec. 6. Section 633.305, unnumbered paragraph 2, Code
27 1999, is amended to read as follows:

28 As used in this section, "heir" means only such person as
29 would, in an intestate estate, be entitled to a share under
30 section 633.219, subsection 1, 2, or 3, or 4 of-section
31 633-219.

32 Sec. 7. Section 633.705, Code 1999, is amended to read as
33 follows:

34 633.705 WHEN POWER OF ATTORNEY NOT AFFECTED BY DISABILITY.

35 1. Whenever a principal designates another the principal's

1 attorney in fact or agent by a power of attorney in writing
2 and the writing contains the words "This power of attorney
3 shall not be affected by disability of the principal", or
4 "This power of attorney shall become effective upon the
5 disability of the principal", or similar words showing the
6 intent of the principal that the authority conferred shall be
7 exercisable notwithstanding the principal's disability, the
8 authority of the attorney in fact or agent is exercisable as
9 provided in the power on behalf of the principal
10 notwithstanding later disability or incapacity of the
11 principal or later uncertainty as to whether the principal is
12 dead or alive. All acts done by the attorney in fact or agent
13 pursuant to the power during any period of disability or
14 incompetence or uncertainty as to whether the principal is
15 dead or alive have the same effect and inure to the benefit of
16 and bind the principal and the principal's heirs, devisees and
17 personal representatives as if the principal were alive,
18 competent and not disabled. If a conservator thereafter is
19 appointed for the principal, the attorney in fact or agent,
20 during the continuance of the appointment, shall account to
21 the conservator rather than the principal, and the conservator
22 shall have the power to revoke the power of attorney on behalf
23 of the principal.

24 2. An affidavit, executed by the attorney in fact or agent
25 stating that the attorney in fact or agent did not have, at
26 the time of doing an act pursuant to the power of attorney,
27 actual knowledge of the revocation or termination of the power
28 of attorney by death or by the act of the principal, is, in
29 the absence of fraud, conclusive proof of the nonrevocation or
30 nontermination of the power at that time. If the exercise of
31 the power requires execution and delivery of any instrument
32 which is recordable, the affidavit when properly acknowledged
33 is also recordable.

34 EXPLANATION

35 This bill amends several sections of Code chapter 633

1 relating to probate.

2 The bill amends Code section 633.31 to specify that court
3 costs are not taxable on any type of trust, whether it is
4 testamentary or inter vivos.

5 The bill amends Code section 633.32 to change the notice
6 and reporting date schedule for delinquent inventories and
7 reports due by law by one month.

8 The bill amends Code section 633.108 to allow bequests of
9 \$10,000 or less to a minor to be paid to a custodian for the
10 minor under the uniform transfers to minors Act, without a
11 court order.

12 The bill amends Code section 633.271 to specify that when a
13 divorce of the testator revokes will provisions relating to
14 the testator's spouse, the revocation includes dispositions,
15 appointments of property, or nominations to serve in a
16 fiduciary or representative capacity.

17 The bill amends the definition of "heir" in Code sections
18 633.304 and 633.305 as it relates to those who are entitled to
19 receive notice of probate. The amendment includes notice to
20 grandparents or issue of grandparents of the decedent, in
21 addition to the decedent's children and parents, in line with
22 those entitled to inherit from an intestate estate under Code
23 section 633.219.

24 The bill amends Code section 633.705 to add a provision
25 parallel to that contained in Code section 633.706 that allows
26 an attorney in fact or agent to complete an affidavit that the
27 attorney in fact or agent had no knowledge of the revocation
28 or termination of a power of attorney at the time of an act
29 pursuant to the power of attorney.

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3/15/00 *Judiciary*

FEB 29 2000

REPRINTED

Place On Calendar

2518

HOUSE FILE
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 744)

(P. 741) Passed House, Date 3-14-00 Passed Senate ^(P. 1052) Date 4/6/00
 Vote: Ayes 95 Nays 0 Vote: Ayes 47 Nays 0
 Approved 4/26/00

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5 ~~trust from an estate that has been administered in this state~~
6 ~~and for which court costs have been assessed and paid.~~

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13 that unless such delinquent inventory or report is filed
14 within sixty days thereafter, the matter shall be reported to
15 the presiding judge. If the delinquent inventory is not filed
16 within the time so specified, the fiduciary will be subject to
17 removal under the provisions of section 633.65 of this Code.

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27 to a bequest or legacy, to a share of the estate of an
28 intestate, or to a beneficial interest in a trust fund upon
29 the distribution of the trust fund, and the value of the
30 bequest, legacy, share, or interest does not exceed the sum of
31 ten thousand dollars, ~~and a conservator for the minor has not~~
32 ~~been appointed, the court having jurisdiction of the~~
33 ~~distribution of the funds may, in its discretion, upon the~~
34 ~~application of the fiduciary, enter an order authorizing the~~
35 ~~fiduciary to pay the bequest, legacy, share, or interest the~~

1 personal representative or trustee may pay the bequest,
2 legacy, share, or interest to a custodian under any uniform
3 transfers to minors Act. Receipt by the custodian, when
4 presented to the court or filed with the report of
5 distribution of the fiduciary, shall have the same force and
6 effect as though the payment had been made to a duly appointed
7 and qualified conservator for the minor.

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13 the testator's spouse, including but not limited to
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2 and the writing contains the words "This power of attorney
3 shall not be affected by disability of the principal", or
4 "This power of attorney shall become effective upon the
5 disability of the principal", or similar words showing the
6 intent of the principal that the authority conferred shall be
7 exercisable notwithstanding the principal's disability, the
8 authority of the attorney in fact or agent is exercisable as
9 provided in the power on behalf of the principal
10 notwithstanding later disability or incapacity of the
11 principal or later uncertainty as to whether the principal is
12 dead or alive. All acts done by the attorney in fact or agent
13 pursuant to the power during any period of disability or
14 incompetence or uncertainty as to whether the principal is
15 dead or alive have the same effect and inure to the benefit of
16 and bind the principal and the principal's heirs, devisees and
17 personal representatives as if the principal were alive,
18 competent and not disabled. If a conservator thereafter is
19 appointed for the principal, the attorney in fact or agent,
20 during the continuance of the appointment, shall account to
21 the conservator rather than the principal, and the conservator
22 shall have the power to revoke the power of attorney on behalf
23 of the principal.

24 2. An affidavit, executed by the attorney in fact or agent
25 stating that the attorney in fact or agent did not have, at
26 the time of doing an act pursuant to the power of attorney,
27 actual knowledge of the revocation or termination of the power
28 of attorney by death or by the act of the principal, is, in
29 the absence of fraud, conclusive proof of the nonrevocation or
30 nontermination of the power at that time. If the exercise of
31 the power requires execution and delivery of any instrument
32 which is recordable, the affidavit when properly acknowledged
33 is also recordable.

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EXPLANATION

35 This bill amends several sections of Code chapter 633

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3 costs are not taxable on any type of trust, whether it is
4 testamentary or inter vivos.

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6 and reporting date schedule for delinquent inventories and
7 reports due by law by one month.

8 The bill amends Code section 633.108 to allow bequests of
9 \$10,000 or less to a minor to be paid to a custodian for the
10 minor under the uniform transfers to minors Act, without a
11 court order.

12 The bill amends Code section 633.271 to specify that when a
13 divorce of the testator revokes will provisions relating to
14 the testator's spouse, the revocation includes dispositions,
15 appointments of property, or nominations to serve in a
16 fiduciary or representative capacity.

17 The bill amends the definition of "heir" in Code sections
18 633.304 and 633.305 as it relates to those who are entitled to
19 receive notice of probate. The amendment includes notice to
20 grandparents or issue of grandparents of the decedent, in
21 addition to the decedent's children and parents, in line with
22 those entitled to inherit from an intestate estate under Code
23 section 633.219.

24 The bill amends Code section 633.705 to add a provision
25 parallel to that contained in Code section 633.706 that allows
26 an attorney in fact or agent to complete an affidavit that the
27 attorney in fact or agent had no knowledge of the revocation
28 or termination of a power of attorney at the time of an act
29 pursuant to the power of attorney.

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**HOUSE FILE 2518
FISCAL NOTE**

A fiscal note for House File 2518 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2518 relates to probate law, and requires that court costs are not to be charged on any type of trust. The notice and reporting date schedule for delinquent inventories and reports due by law are changed by one month. Bequests of \$10,000 or less to a minor are to be paid to a custodian of the minor without a court order. The Bill specifies that when a divorce of a testator revokes will provisions relating to the testator's spouse, the revocation includes dispositions, appointments of property, or nominations to serve in a fiduciary or representative capacity. The definition of "heir" is amended as it relates to those who are to receive notice of probate. House File 2518 includes notice to grandparents or issue of grandparents, in addition to the decedent's children and parents, in line with those entitled to inherit from an intestate estate.

ASSUMPTIONS

1. Under current law, court costs are assessed on trusts. House File 2518 strikes that fee.
2. The fee is not uniformly paid.

FISCAL IMPACT

The fiscal impact of House File 2518 is not anticipated to be significant.

SOURCE

Office of the State Court Administrator

(LSB 5716hv, BAL)

FILED MARCH 6, 2000

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2518

H-8156

1 Amend House File 2518 as follows:

2 1. Page 3, by inserting after line 33 the
3 following:

4 "Sec. _____. Section 633.1102, subsection 15, as
5 enacted by 1999 Iowa Acts, chapter 125, section 2, is
6 amended to read as follows:

7 15. "Term" or "terms", when used in relation to a
8 trust, means the manifestation of the settlor's intent
9 regarding a trust's provisions at the time of the
10 trust's creation or amendment. "Term" includes those
11 concepts expressed directly in writing, as well as
12 those inferred from constructional preferences or
13 rules, or by other proof admissible under the rules of
14 evidence.

15 Sec. _____. Section 633.2106, subsections 1 and 2,
16 as enacted by 1999 Iowa Acts, chapter 125, section 13,
17 are amended to read as follows:

18 1. Where the owner of property gratuitously
19 transfers the property and manifests in the trust
20 instrument an intention that the transferee should
21 hold the property in trust but the trust fails, the
22 transferee holds the trust estate as a resulting trust
23 for the transferor or the transferor's estate, unless
24 ~~and~~ either of the following is true:

25 a. The transferor manifested in the trust
26 instrument an intention that no resulting trust should
27 arise.

28 b. The intended trust fails for illegality and the
29 policy against unjust enrichment of the transferee is
30 outweighed by the policy against giving relief to a
31 person who has entered into an illegal transaction.

32 2. Where the owner of property gratuitously
33 transfers the property subject to a trust which is
34 properly declared and which has been fully performed
35 without exhausting the trust estate, the trustee holds
36 the surplus as a resulting trust for the transferor or
37 the transferor's estate, unless the transferor
38 manifested in the trust instrument an intention that
39 no resulting trust of the surplus should arise.

40 Sec. _____. Section 633.2201, as enacted by 1999
41 Iowa Acts, chapter 125, section 15, is amended to read
42 as follows:

43 633.2201 TERMINATION OR-MODIFICATION OF TRUST.

44 1. In addition to the methods specified in
45 sections 633.2202 through 633.2205, a trust terminates
46 when any of the following occurs:

47 a. The term of the trust expires.

48 b. The trust purpose is fulfilled.

49 c. The trust purpose becomes unlawful or
50 impossible to fulfill.

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1 d. The trust is revoked.

2 2. On termination of a trust, the trustee may
3 exercise the powers necessary to wind up the affairs
4 of the trust and distribute the trust property to
5 those entitled to the trust property.

6 3. For purposes of sections 633.2202 through
7 633.2205, a beneficiary is limited to a person that is
8 an eligible recipient of income or principal, or would
9 receive principal or income from the trust if it were
10 terminated.

11 Sec. _____. Section 633.2203, as enacted by 1999
12 Iowa Acts, chapter 125, section 17, is amended to read
13 as follows:

14 633.2203 MODIFICATION OR TERMINATION OF
15 IRREVOCABLE TRUST IF-NO-MATERIAL-PURPOSE.

16 1. An irrevocable trust may be terminated or
17 modified either by the court ~~or-upon~~ with the consent
18 of all of the beneficiaries if continuance of the
19 trust on the same or different terms is not necessary
20 to carry out a material purpose.

21 ~~2. Upon petition to the court by the settlor,~~
22 ~~trustee, or other interested person, the court may set~~
23 ~~aside an improper termination or modification by the~~
24 ~~beneficiaries.~~

25 ~~3. 2.~~ Upon termination of the trust, the trustee
26 court shall distribute order the distribution of trust
27 property in accordance with the probable intention of
28 the settlor ~~or-as-agreed-by-the-beneficiaries.~~

29 ~~4. 3.~~ For purposes of this section, the consent of
30 a person who may bind a beneficiary is considered the
31 consent of the beneficiary.

32 Sec. _____. 1999 Iowa Acts, chapter 125, is amended
33 by adding the following new section:

34 SEC. 110. NEW SECTION. 633.2203A MODIFICATION OF
35 ADMINISTRATIVE PROVISIONS BY COURT FOR CHANGE OF
36 CIRCUMSTANCES.

37 On petition by a trustee or beneficiary, the court
38 may modify the administrative provisions of the trust,
39 if, owing to circumstances not known to the settlor
40 and not anticipated by the settlor, the continuation
41 of the trust under its terms would defeat or
42 substantially impair the accomplishment of the
43 purposes of the trust. If necessary to carry out the
44 purposes of the trust, the court may order the trustee
45 to do acts that are not authorized or are forbidden by
46 the trust instrument.

47 Sec. _____. Section 633.2206, subsection 1, as
48 enacted by 1999 Iowa Acts, chapter 125, section 20, is
49 amended to read as follows:

50 1. A trustee, without approval of court, may

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1 combine two or more trusts with substantially similar
2 beneficial interests unless the trust is a court
3 reporting trust.

4 Sec. _____. Section 633.2207, as enacted by 1999
5 Iowa Acts, chapter 125, section 21, is amended to read
6 as follows:

7 633.2207 DIVISION OF TRUSTS.

8 1. Without approval of a court, a trustee may
9 divide a trust into two or more separate trusts with
10 substantially similar terms if the division will not
11 defeat or substantially impair the accomplishment of
12 the trust purposes or the rights of the beneficiaries
13 unless the trust is a court reporting trust.

14 2. On petition by a trustee or beneficiary, the
15 court may divide a trust into two or more separate
16 trusts, whether or not their terms are similar, if the
17 court determines that dividing the trust is in the
18 best interest of the beneficiaries and will not defeat
19 or substantially impair the accomplishment of the
20 trust purposes or the rights of the beneficiaries. To
21 facilitate the division, the trustee may divide the
22 trust assets in kind, by pro rata or non-pro rata
23 division, or by any combination of the methods.

24 Sec. _____. Section 633.3101, subsection 1, as
25 enacted by 1999 Iowa Acts, chapter 125, section 25, is
26 amended to read as follows:

27 1. ~~The competency necessary to~~ To create, revoke,
28 or modify a revocable trust, ~~that contains dispositive~~
29 ~~provisions upon the death of the settlor is the same~~
30 ~~as the competency required to make a will~~ must be
31 competent. An aggrieved person shall have all causes
32 of action and remedies available to the aggrieved
33 person in attacking the creation, revocation, or
34 modification of a revocable trust as one would if
35 attacking the propriety of the execution of a will.

36 Sec. _____. Section 633.3104, subsection 2, as
37 enacted by 1999 Iowa Acts, chapter 125, section 28, is
38 amended to read as follows:

39 2. Following the death of a settlor, the property
40 of a revocable trust subject to the settlor's power of
41 revocation at the time of death is subject to the
42 claims of the settlor's creditors and costs of
43 administration of the settlor's estate to the extent
44 of the value of the property over which the ~~settlor's~~
45 settlor had a power of revocation and, if the
46 settlor's estate is inadequate to satisfy those claims
47 and costs.

48 Sec. _____. Section 633.3107, subsection 1, as
49 enacted by 1999 Iowa Acts, chapter 125, section 31, is
50 amended to read as follows:

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1 1. If, after executing a revocable trust, the
2 settlor is divorced or the settlor's marriage is
3 dissolved, all provisions in the trust in favor of the
4 settlor's spouse including, but not limited to,
5 dispositions, appointments of property, and
6 nominations to serve in any fiduciary or
7 representative capacity are revoked by divorce or
8 dissolution of marriage.

9 Sec. ____ . Section 633.3108, as enacted by 1999
10 Iowa Acts, chapter 125, section 32, is amended to read
11 as follows:

12 633.3108 LIMITATION ON CONTEST OF REVOCABLE TRUST.

13 Unless notice is given as provided in section
14 633.3109, the following provisions shall apply:

15 1. Unless previously barred by adjudication,
16 consent, or other limitation, a proceeding to contest
17 the validity of a revocable trust must be brought no
18 later than one year following the death of the
19 settlor.

20 2. Unless the trustee is a party to a pending
21 proceeding contesting its validity, six months
22 following the death of the settlor, the trustee of a
23 revocable trust may assume the trust's validity and
24 proceed to distribute the trust property in accordance
25 with the terms of the trust, without liability for so
26 doing. Liability for an improper distribution in such
27 a case is solely on the beneficiaries.

28 ~~3. If notice is given pursuant to section~~
29 ~~633.3109, the six-month period in subsection 2 is~~
30 ~~ineffectual and the applicable time period shall be~~
31 ~~determined by section 633.3109.~~

32 Sec. ____ . Section 633.3109, as enacted by 1999
33 Iowa Acts, chapter 125, section 33, is amended to read
34 as follows:

35 633.3109 NOTICE TO CREDITORS, HEIRS, SPOUSE, AND
36 BENEFICIARIES.

37 1. As used in this section, "intestate heir" means
38 only such person as would, in an intestate estate, be
39 entitled to a share under section 633.219, subsection
40 1, 2, or 3, or 4.

41 2. A creditor of a deceased settlor of a revocable
42 trust must bring suit to enforce its claim against the
43 assets of the decedent's trust within one year of the
44 decedent's death or be forever barred from collection
45 against the trust assets. If a probate administration
46 is commenced for the decedent and notice is properly
47 given pursuant to section 633.230 or 633.304, a
48 creditor's rights shall be determined under those
49 sections and section 633.3104.

50 3. If no notice is given to creditors and heirs

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1 pursuant to subsection ~~1~~ 2, a creditor's rights may be
2 established or terminated if the trustee gives notice
3 as follows:

4 a. The trustee shall publish a notice once each
5 week for two consecutive weeks in a daily or weekly
6 newspaper of general circulation published in the
7 county in which the ~~settlor was domiciled~~ decedent was
8 a resident at the time of death, and in any county of
9 which the decedent was a nonresident but in which some
10 real estate of the trust is located. If the decedent
11 was not a resident of Iowa, but the principal place of
12 administration is in Iowa, the trustee shall publish
13 notice in the county that is the principal place of
14 administration pursuant to section 633.6102.

15 b. ~~If the decedent was a nonresident of the county~~
16 ~~in which some real estate of the trust is located, and~~
17 at any time during the pendency of the trust
18 administration the trustee has knowledge of the name
19 and address of a person believed to own or possess a
20 claim which will not, or may not, be paid or otherwise
21 satisfied during administration, the trustee shall
22 provide a notice by ordinary mail to each such
23 claimant at the claimant's last known address.

24 c. As soon as practicable, the trustee shall give
25 a notice by ordinary mail to the surviving spouse, the
26 ~~intestate~~ heirs of the decedent, and each beneficiary
27 under the trust whose identities are reasonably
28 ascertainable, at such person's last known addresses.

29 d. The notice in paragraphs "a", "b", and "c"
30 shall include notification of the decedent's death,
31 and the fact that any action to contest the validity
32 of the trust must be brought within the later to occur
33 of sixty days from the date of the second publication
34 of the notice made pursuant to paragraph "a" or thirty
35 days from the date of mailing of the notice pursuant
36 to paragraph "b" or "c". A person who does not make a
37 claim within the appropriate period is forever barred.

38 e. The trustee shall give notice to debtors to
39 make payment, and to creditors having claims against
40 the trust assets to mail proof of their claim to the
41 trustee via certified mail, return receipt requested,
42 within the later to occur of sixty days from the
43 second publication of the notice or thirty days from
44 the date of mailing of the notice, or thereafter be
45 forever barred.

46 4. The notice described in subsection 3 shall be
47 substantially in the following form:

48 To all persons regarding _____, deceased,
49 who died on or about _____,
50 (year) _____. You are hereby notified that _____

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1 is the trustee of the _____ Trust. At this time,
2 no probate administration is contemplated with regard
3 to the above-referenced decedent's estate.

4 Any action to contest the validity of the trust
5 must be brought in the District Court of
6 _____ County, Iowa, within the later to
7 occur of sixty days from the date of second
8 publication of this notice, or thirty days from the
9 date of mailing this notice to all heirs of the
10 decedent, spouse of the decedent, and beneficiaries
11 under the trust whose identities are reasonably
12 ascertainable. Any claim not filed within this period
13 shall be forever barred.

14 Notice is further given that all persons indebted
15 to the decedent or to the trust are requested to make
16 immediate payment to the undersigned trustee.
17 Creditors having claims against the trust must mail
18 them to the trustee at the address listed below via
19 certified mail, return receipt requested. Unless
20 creditor claims are mailed by the later to occur of
21 sixty days from the second publication of this notice
22 or thirty days from the date of mailing this notice, a
23 claim shall be forever barred, unless otherwise
24 allowed or paid.

25 Dated this _____ day of _____, (year) _____.
26 _____ Trust

27 _____
28 Trustee
29 Address: _____
30 _____

31 Date of second publication _____ day of _____,
32 (year) _____.

33 5. ~~The claimant either must receive satisfaction~~
34 ~~of its claim within sixty days of mailing its claim to~~
35 ~~the trustee,~~ or must file suit against the trust to
36 enforce collection of the creditor's claim within
37 sixty days of mailing its claim to the trustee. The
38 trustee and creditor may agree to extend the
39 limitations period for filing an action to enforce the
40 claim. If the claimant fails to properly file its
41 claim within the established time period or bring an
42 action to enforce its claim within the established
43 time period, the creditor's claim shall be forever
44 barred.

45 Sec. _____. Section 633.3111, subsection 2, as
46 enacted by 1999 Iowa Acts, chapter 125, section 35, is
47 amended to read as follows:

48 2. A trustee shall be entitled to indemnification
49 from the beneficiaries for all amounts paid to
50 creditors under this section, to the extent of

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1 distributions made.

2 Sec. _____. Section 633.4101, as enacted by 1999
3 Iowa Acts, chapter 125, section 36, is amended to read
4 as follows:

5 633.4101 ACCEPTANCE OR REJECTION-OF-TRUST-BY

6 DECLINATION TO SERVE AS TRUSTEE.

7 1. A person named as trustee accepts the office of
8 trustee by doing one of the following:

9 a. Signing the trust instrument, or signing a
10 separate written acceptance.

11 b. Except as provided in subsection 3, knowingly
12 accepting delivery of the trust property or exercising
13 powers or performing duties as trustee.

14 2. A person named as trustee who has not yet
15 accepted the office of trustee may in writing ~~reject~~
16 the-trust decline to serve as trustee.

17 3. If there is an immediate risk of damage to the
18 trust property, the person named as trustee may act to
19 preserve the trust property without accepting the
20 office of trustee, if within a reasonable time after
21 acting, the person delivers a written ~~rejection-of-the~~
22 trust declination to serve to the settlor, or if the
23 settlor is dead or lacks capacity, to the
24 beneficiaries eligible to receive income or principal
25 distributions from the trust.

26 Sec. _____. Section 633.4104, subsection 1, as
27 enacted by 1999 Iowa Acts, chapter 125, section 39, is
28 amended to read as follows:

29 1. The person named as trustee ~~rejects-the-trust~~
30 declines to serve as trustee.

31 Sec. _____. Section 633.4105, as enacted by 1999
32 Iowa Acts, chapter 125, section 40, is amended to read
33 as follows:

34 633.4105 FILLING VACANCY.

35 ~~1:--For purposes of this section, "adult~~
36 ~~beneficiaries" shall not include either of the~~
37 ~~following:~~

38 ~~a:--Beneficiaries who are not competent and are not~~
39 ~~represented by a guardian, conservator, or agent;~~

40 ~~b:--Beneficiaries who are not entitled or eligible~~
41 ~~to receive trust income or a distribution of principal~~
42 ~~were the trust to terminate at the time the agreement~~
43 ~~is made;~~

44 2: 1. A trustee must be appointed to fill a
45 vacancy in the office of the trustee only if the trust
46 has no trustee or the terms of the trust require a
47 vacancy in the office of cotrustee to be filled.

48 3: 2. A vacancy in the office of trustee shall be
49 filled according to the following:

50 a. By the person named in or nominated pursuant to

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1 the method specified by the terms of the trust.

2 b. If the terms of the trust do not name a person
3 or specify a method for filling the vacancy, or if the
4 person named or nominated pursuant to the method
5 specified fails to accept, one of the following
6 methods shall be used:

7 ~~{1}--By-a-trust-company-designated-by-agreement-of~~
8 ~~the-adult-beneficiaries-specified-in-subsection-1:~~

9 {2} (1) By majority vote of all adult
10 beneficiaries and the ~~parent-or-legal-guardian~~
11 representative of any minor or incompetent
12 beneficiary, as defined by section 633.6303.

13 {3} (2) By a person appointed by the court on
14 petition of an interested person or of a person named
15 as trustee by the terms of the trust. The court, in
16 selecting a trustee, shall consider any nomination
17 made by the adult beneficiaries and representatives.

18 3. Beneficiaries entitled to vote are those who
19 are currently entitled or eligible to receive trust
20 income or a distribution of principal if the trust
21 were to terminate at the time of the vote.

22 Sec. ____ . Section 633.4107, subsection 1, as
23 enacted by 1999 Iowa Acts, chapter 125, section 42, is
24 amended to read as follows:

25 1. A trustee may be removed in accordance with the
26 terms of the trust, ~~by-the-court-on-its-own-motion,~~ or
27 on petition of a settlor, cotrustee, or beneficiary
28 under section 633.6202.

29 Sec. ____ . Section 633.4111, subsection 2,
30 paragraph b, as enacted by 1999 Iowa Acts, chapter
31 125, section 46, is amended to read as follows:

32 b. Each beneficiary who was given the last
33 preceding account accounting.

34 Sec. ____ . Section 633.4504 as enacted by 1999 Iowa
35 Acts, chapter 125, section 76, is amended to read as
36 follows:

37 633.4504 LIMITATION OF ACTION AGAINST TRUSTEE
38 ~~FOLLOWING-FINAL-ACCOUNT.~~

39 1. Unless previously barred by adjudication,
40 consent, or other limitation, a claim against a
41 trustee for breach of trust is barred as to a
42 beneficiary who has received a final account or other
43 report adequately disclosing the existence of the
44 claim, unless a proceeding to assert the claim is
45 commenced within one year after the ~~later~~ earlier of
46 the receipt of the account accounting or report or of
47 the termination of the trust relationship between the
48 trustee and beneficiary. An account or report
49 adequately discloses the existence of a claim if it
50 provides sufficient information so that the

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1 beneficiary knows of the claim or reasonably should
2 have inquired into its existence.

3 2. For the purpose of subsection 1, a beneficiary
4 is deemed to have received an account or report in the
5 following instances:

6 a. In the case of an adult who is reasonably
7 capable of understanding the account or report, if it
8 is received by the adult personally.

9 b. In the case of an adult who is not reasonably
10 capable of understanding the account or report, if it
11 is received by the adult's legal representative,
12 including a guardian ad litem or other person
13 appointed for this purpose.

14 c. In the case of a minor, if it is received by
15 the minor's guardian or conservator or, if the minor
16 does not have a guardian or conservator, if it is
17 received by a parent of the minor who does not have a
18 conflict of interest.

19 3. Any claim for breach of trust against a trustee
20 who has presented a final report to a beneficiary more
21 than one year prior to the effective date of this Act
22 shall be time barred unless some exception stated in
23 this section applies which tolls the statute. Any
24 claim arising under this section within one year of
25 the effective date of the Act shall be time barred
26 after one year unless an exception applies to toll the
27 statute.

28 Sec. ____ . 1999 Iowa Acts, chapter 125, section 69
29 is repealed."

30 2. Title page, line 1, by inserting after the
31 word "probate" the following: "and trust".

32 3. Title page, line 4, by striking the words "and
33 powers of attorney" and inserting the following:
34 "powers of attorney, and making certain amendments to
35 the Iowa trust code".

By LARSON of Linn
KREIMAN of Davis

H-8156 FILED MARCH 2, 2000

Adopted
3-14-00
(p. 741)

HOUSE FILE 2518

H-8222

- 1 Amend House File 2518 as follows:
- 2 1. Page 1, by striking lines 1 through 6.
- 3 2. Title page, lines 1 and 2, by striking the
- 4 words "assessment of court costs,".
- 5 3. By renumbering as necessary.

By MILLAGE of Scott

H-8222 FILED MARCH 7, 2000

Adopted
3.14.00 (P. 732)

S. 3 00
S-3/23/00 Unfinished
Business Calendar

HOUSE FILE 2518
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 744)

(As Amended and Passed by the House, March 14, 2000)

Passed House, Date _____ Passed Senate, Date 4/6/00
Vote: Ayes _____ Nays _____ Vote: Ayes 47 Nays 0
Approved 4/26/00

A BILL FOR

* 1 An Act relating to probate and trust law, including certain
2 notification provisions, certain distributions to minors, the
3 effect of dissolution of marriage on will provisions, powers
4 of attorney, and making certain amendments to the Iowa trust
5 code.

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

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House Amendments _____

Deleted Language *

* 1 Section 1. Section 633.32, subsections 1 and 2, Code 1999,
2 are amended to read as follows:

3 1. On ~~May~~ June 1 and ~~November~~ December 1 of each year, the
4 clerk shall notify the fiduciary and the fiduciary's attorney
5 of any delinquent inventories or reports due by law in any
6 pending estate, trust, guardianship, or conservatorship, and
7 that unless such delinquent inventory or report is filed
8 within sixty days thereafter, the matter shall be reported to
9 the presiding judge. If the delinquent inventory is not filed
10 within the time so specified, the fiduciary will be subject to
11 removal under the provisions of section 633.65 of this Code.

12 2. On ~~July~~ August 1 and ~~January~~ February 1 of each year,
13 the clerk shall report to the presiding judge all delinquent
14 inventories or reports in estates, trusts, guardianships or
15 conservatorships on which such notice has been given and no
16 report or inventory has been filed in response to the notice.

17 Sec. 2. Section 633.108, Code 1999, is amended to read as
18 follows:

19 633.108 SMALL DISTRIBUTIONS TO MINORS -- PAYMENT.

20 Whenever a minor becomes entitled under the terms of a will
21 to a bequest or legacy, to a share of the estate of an
22 intestate, or to a beneficial interest in a trust fund upon
23 the distribution of the trust fund, and the value of the
24 bequest, legacy, share, or interest does not exceed the sum of
25 ten thousand dollars, ~~and-a-conservator-for-the-minor-has-not~~
26 ~~been-appointed, the court having jurisdiction of the~~
27 ~~distribution of the funds may, in its discretion, upon the~~
28 ~~application of the fiduciary, enter an order authorizing the~~
29 ~~fiduciary to pay the bequest, legacy, share, or interest~~ the
30 personal representative or trustee may pay the bequest,
31 legacy, share, or interest to a custodian under any uniform
32 transfers to minors Act. Receipt by the custodian, when
33 presented to the court or filed with the report of
34 distribution of the fiduciary, shall have the same force and
35 effect as though the payment had been made to a duly appointed

1 and qualified conservator for the minor.

2 Sec. 3. Section 633.271, Code 1999, is amended to read as
3 follows:

4 633.271 EFFECT OF DIVORCE OR DISSOLUTION.

5 If after making a will the testator is divorced or the
6 marriage is dissolved, all provisions in the will in favor of
7 the testator's spouse, including but not limited to
8 dispositions, appointments relating to property, and
9 nominations to serve in any fiduciary or representative
10 capacity, are thereby revoked. In the event the testator and
11 spouse remarry each other, the provisions of the will revoked
12 by the divorce or dissolution of marriage shall be reinstated
13 unless otherwise revoked by the testator.

14 Sec. 4. Section 633.304, unnumbered paragraph 2, Code
15 1999, is amended to read as follows:

16 As used in this section, "heir" means only such person as
17 would, in an intestate estate, be entitled to a share under
18 section 633.219, subsection 1, 2, or 3, or 4 of-section
19 633-219.

20 Sec. 5. Section 633.305, unnumbered paragraph 2, Code
21 1999, is amended to read as follows:

22 As used in this section, "heir" means only such person as
23 would, in an intestate estate, be entitled to a share under
24 section 633.219, subsection 1, 2, or 3, or 4 of-section
25 633-219.

26 Sec. 6. Section 633.705, Code 1999, is amended to read as
27 follows:

28 633.705 WHEN POWER OF ATTORNEY NOT AFFECTED BY DISABILITY.

29 1. Whenever a principal designates another the principal's
30 attorney in fact or agent by a power of attorney in writing
31 and the writing contains the words "This power of attorney
32 shall not be affected by disability of the principal", or
33 "This power of attorney shall become effective upon the
34 disability of the principal", or similar words showing the
35 intent of the principal that the authority conferred shall be

1 exercisable notwithstanding the principal's disability, the
2 authority of the attorney in fact or agent is exercisable as
3 provided in the power on behalf of the principal
4 notwithstanding later disability or incapacity of the
5 principal or later uncertainty as to whether the principal is
6 dead or alive. All acts done by the attorney in fact or agent
7 pursuant to the power during any period of disability or
8 incompetence or uncertainty as to whether the principal is
9 dead or alive have the same effect and inure to the benefit of
10 and bind the principal and the principal's heirs, devisees and
11 personal representatives as if the principal were alive,
12 competent and not disabled. If a conservator thereafter is
13 appointed for the principal, the attorney in fact or agent,
14 during the continuance of the appointment, shall account to
15 the conservator rather than the principal, and the conservator
16 shall have the power to revoke the power of attorney on behalf
17 of the principal.

18 2. An affidavit, executed by the attorney in fact or agent
19 stating that the attorney in fact or agent did not have, at
20 the time of doing an act pursuant to the power of attorney,
21 actual knowledge of the revocation or termination of the power
22 of attorney by death or by the act of the principal, is, in
23 the absence of fraud, conclusive proof of the nonrevocation or
24 nontermination of the power at that time. If the exercise of
25 the power requires execution and delivery of any instrument
26 which is recordable, the affidavit when properly acknowledged
27 is also recordable.

28 Sec. 7. Section 633.1102, subsection 15, as enacted by
29 1999 Iowa Acts, chapter 125, section 2, is amended to read as
30 follows:

31 15. "Term" or "terms", when used in relation to a trust,
32 means the manifestation of the settlor's intent regarding a
33 trust's provisions at the time of the trust's creation or
34 amendment. "Term" includes those concepts expressed directly
35 in writing, as well as those inferred from constructional

1 preferences or rules, or by other proof admissible under the
2 rules of evidence.

3 Sec. 8. Section 633.2106, subsections 1 and 2, as enacted
4 by 1999 Iowa Acts, chapter 125, section 13, are amended to
5 read as follows:

6 1. Where the owner of property gratuitously transfers the
7 property and manifests in the trust instrument an intention
8 that the transferee should hold the property in trust but the
9 trust fails, the transferee holds the trust estate as a
10 resulting trust for the transferor or the transferor's estate,
11 unless ~~and~~ either of the following is true:

12 a. The transferor manifested in the trust instrument an
13 intention that no resulting trust should arise.

14 b. The intended trust fails for illegality and the policy
15 against unjust enrichment of the transferee is outweighed by
16 the policy against giving relief to a person who has entered
17 into an illegal transaction.

18 2. Where the owner of property gratuitously transfers the
19 property subject to a trust which is properly declared and
20 which has been fully performed without exhausting the trust
21 estate, the trustee holds the surplus as a resulting trust for
22 the transferor or the transferor's estate, unless the
23 transferor manifested in the trust instrument an intention
24 that no resulting trust of the surplus should arise.

25 Sec. 9. Section 633.2201, as enacted by 1999 Iowa Acts,
26 chapter 125, section 15, is amended to read as follows:

27 633.2201 TERMINATION OR-MODIFICATION OF TRUST.

28 1. In addition to the methods specified in sections
29 633.2202 through 633.2205, a trust terminates when any of the
30 following occurs:

31 a. The term of the trust expires.

32 b. The trust purpose is fulfilled.

33 c. The trust purpose becomes unlawful or impossible to
34 fulfill.

35 d. The trust is revoked.

1 2. On termination of a trust, the trustee may exercise the
2 powers necessary to wind up the affairs of the trust and
3 distribute the trust property to those entitled to the trust
4 property.

5 3. For purposes of sections 633.2202 through 633.2205, a
6 beneficiary is limited to a person that is an eligible
7 recipient of income or principal, or would receive principal
8 or income from the trust if it were terminated.

9 Sec. 10. Section 633.2203, as enacted by 1999 Iowa Acts,
10 chapter 125, section 17, is amended to read as follows:

11 633.2203 MODIFICATION OR TERMINATION OF IRREVOCABLE TRUST
12 IF-NO-MATERIAL-PURPOSE.

13 1. An irrevocable trust may be terminated or modified
14 either by the court or-upon with the consent of all of the
15 beneficiaries if continuance of the trust on the same or
16 different terms is not necessary to carry out a material
17 purpose.

18 ~~2. --Upon petition to the court by the settlor, trustee, or~~
19 ~~other interested person, the court may set aside an improper~~
20 ~~termination or modification by the beneficiaries.~~

21 ~~3. 2. Upon termination of the trust, the trustee court~~
22 ~~shall distribute order the distribution of trust property in~~
23 ~~accordance with the probable intention of the settlor or-as~~
24 ~~agreed-by-the-beneficiaries.~~

25 ~~4. 3. For purposes of this section, the consent of a~~
26 ~~person who may bind a beneficiary is considered the consent of~~
27 ~~the beneficiary.~~

28 Sec. 11. 1999 Iowa Acts, chapter 125, is amended by adding
29 the following new section:

30 SEC. 110. NEW SECTION. 633.2203A MODIFICATION OF
31 ADMINISTRATIVE PROVISIONS BY COURT FOR CHANGE OF
32 CIRCUMSTANCES.

33 On petition by a trustee or beneficiary, the court may
34 modify the administrative provisions of the trust, if, owing
35 to circumstances not known to the settlor and not anticipated

1 by the settlor, the continuation of the trust under its terms
2 would defeat or substantially impair the accomplishment of the
3 purposes of the trust. If necessary to carry out the purposes
4 of the trust, the court may order the trustee to do acts that
5 are not authorized or are forbidden by the trust instrument.

6 Sec. 12. Section 633.2206, subsection 1, as enacted by
7 1999 Iowa Acts, chapter 125, section 20, is amended to read as
8 follows:

9 1. A trustee, without approval of court, may combine two
10 or more trusts with substantially similar beneficial interests
11 unless the trust is a court reporting trust.

12 Sec. 13. Section 633.2207, as enacted by 1999 Iowa Acts,
13 chapter 125, section 21, is amended to read as follows:

14 633.2207 DIVISION OF TRUSTS.

15 1. Without approval of a court, a trustee may divide a
16 trust into two or more separate trusts with substantially
17 similar terms if the division will not defeat or substantially
18 impair the accomplishment of the trust purposes or the rights
19 of the beneficiaries unless the trust is a court reporting
20 trust.

21 2. On petition by a trustee or beneficiary, the court may
22 divide a trust into two or more separate trusts, whether or
23 not their terms are similar, if the court determines that
24 dividing the trust is in the best interest of the
25 beneficiaries and will not defeat or substantially impair the
26 accomplishment of the trust purposes or the rights of the
27 beneficiaries. To facilitate the division, the trustee may
28 divide the trust assets in kind, by pro rata or non-pro rata
29 division, or by any combination of the methods.

30 Sec. 14. Section 633.3101, subsection 1, as enacted by
31 1999 Iowa Acts, chapter 125, section 25, is amended to read as
32 follows:

33 1. ~~The competency necessary to~~ To create, revoke, or
34 modify a revocable trust, ~~that contains dispositive provisions~~
35 ~~upon the death of the settlor is the same as the competency~~

1 required-to-make-a-will must be competent. An aggrieved
2 person shall have all causes of action and remedies available
3 to the aggrieved person in attacking the creation, revocation,
4 or modification of a revocable trust as one would if attacking
5 the propriety of the execution of a will.

6 Sec. 15. Section 633.3104, subsection 2, as enacted by
7 1999 Iowa Acts, chapter 125, section 28, is amended to read as
8 follows:

9 2. Following the death of a settlor, the property of a
10 revocable trust subject to the settlor's power of revocation
11 at the time of death is subject to the claims of the settlor's
12 creditors and costs of administration of the settlor's estate
13 to the extent of the value of the property over which the
14 settlor's settlor had a power of revocation and, if the
15 settlor's estate is inadequate to satisfy those claims and
16 costs.

17 Sec. 16. Section 633.3107, subsection 1, as enacted by
18 1999 Iowa Acts, chapter 125, section 31, is amended to read as
19 follows:

20 1. If, after executing a revocable trust, the settlor is
21 divorced or the settlor's marriage is dissolved, all
22 provisions in the trust in favor of the settlor's spouse
23 including, but not limited to, dispositions, appointments of
24 property, and nominations to serve in any fiduciary or
25 representative capacity are revoked by divorce or dissolution
26 of marriage.

27 Sec. 17. Section 633.3108, as enacted by 1999 Iowa Acts,
28 chapter 125, section 32, is amended to read as follows:

29 633.3108 LIMITATION ON CONTEST OF REVOCABLE TRUST.

30 Unless notice is given as provided in section 633.3109, the
31 following provisions shall apply:

32 1. Unless previously barred by adjudication, consent, or
33 other limitation, a proceeding to contest the validity of a
34 revocable trust must be brought no later than one year
35 following the death of the settlor.

1 2. Unless the trustee is a party to a pending proceeding
2 contesting its validity, six months following the death of the
3 settlor, the trustee of a revocable trust may assume the
4 trust's validity and proceed to distribute the trust property
5 in accordance with the terms of the trust, without liability
6 for so doing. Liability for an improper distribution in such
7 a case is solely on the beneficiaries.

8 ~~3.--if-notice-is-given-pursuant-to-section-633-3109,-the~~
9 ~~six-month-period-in-subsection-2-is-ineffectual-and-the~~
10 ~~applicable-time-period-shall-be-determined-by-section~~
11 ~~633-3109-~~

12 Sec. 18. Section 633.3109, as enacted by 1999 Iowa Acts,
13 chapter 125, section 33, is amended to read as follows:

14 633.3109 NOTICE TO CREDITORS, HEIRS, SPOUSE, AND
15 BENEFICIARIES.

16 1. As used in this section, "intestate heir" means only
17 such person as would, in an intestate estate, be entitled to a
18 share under section 633.219, subsection 1, 2, or 3, or 4.

19 2. A creditor of a deceased settlor of a revocable trust
20 must bring suit to enforce its claim against the assets of the
21 decedent's trust within one year of the decedent's death or be
22 forever barred from collection against the trust assets. If a
23 probate administration is commenced for the decedent and
24 notice is properly given pursuant to section 633.230 or
25 633.304, a creditor's rights shall be determined under those
26 sections and section 633.3104.

27 3. If no notice is given to creditors and heirs pursuant
28 to subsection 1 2, a creditor's rights may be established or
29 terminated if the trustee gives notice as follows:

30 a. The trustee shall publish a notice once each week for
31 two consecutive weeks in a daily or weekly newspaper of
32 general circulation published in the county in which the
33 settlor-was-domiciled decedent was a resident at the time of
34 death, and in any county of which the decedent was a
35 nonresident but in which some real estate of the trust is

1 located. If the decedent was not a resident of Iowa, but the
2 principal place of administration is in Iowa, the trustee
3 shall publish notice in the county that is the principal place
4 of administration pursuant to section 633.6102.

5 b. If the decedent was a nonresident of the county in
6 which some real estate of the trust is located, and at any
7 time during the pendency of the trust administration the
8 trustee has knowledge of the name and address of a person
9 believed to own or possess a claim which will not, or may not,
10 be paid or otherwise satisfied during administration, the
11 trustee shall provide a notice by ordinary mail to each such
12 claimant at the claimant's last known address.

13 c. As soon as practicable, the trustee shall give a notice
14 by ordinary mail to the surviving spouse, the intestate heirs
15 of the decedent, and each beneficiary under the trust whose
16 identities are reasonably ascertainable, at such person's last
17 known addresses.

18 d. The notice in paragraphs "a", "b", and "c" shall
19 include notification of the decedent's death, and the fact
20 that any action to contest the validity of the trust must be
21 brought within the later to occur of sixty days from the date
22 of the second publication of the notice made pursuant to
23 paragraph "a" or thirty days from the date of mailing of the
24 notice pursuant to paragraph "b" or "c". A person who does
25 not make a claim within the appropriate period is forever
26 barred.

27 e. The trustee shall give notice to debtors to make
28 payment, and to creditors having claims against the trust
29 assets to mail proof of their claim to the trustee via
30 certified mail, return receipt requested, within the later to
31 occur of sixty days from the second publication of the notice
32 or thirty days from the date of mailing of the notice, or
33 thereafter be forever barred.

34 4. The notice described in subsection 3 shall be
35 substantially in the following form:

1 To all persons regarding _____, deceased, who
2 died on or about _____, (year)____. You are
3 hereby notified that _____ is the trustee of the
4 _____ Trust. At this time, no probate administration is
5 contemplated with regard to the above-referenced decedent's
6 estate.

7 Any action to contest the validity of the trust must be
8 brought in the District Court of _____ County,
9 Iowa, within the later to occur of sixty days from the date of
10 second publication of this notice, or thirty days from the
11 date of mailing this notice to all heirs of the decedent,
12 spouse of the decedent, and beneficiaries under the trust
13 whose identities are reasonably ascertainable. Any claim not
14 filed within this period shall be forever barred.

15 Notice is further given that all persons indebted to the
16 decedent or to the trust are requested to make immediate
17 payment to the undersigned trustee. Creditors having claims
18 against the trust must mail them to the trustee at the address
19 listed below via certified mail, return receipt requested.
20 Unless creditor claims are mailed by the later to occur of
21 sixty days from the second publication of this notice or
22 thirty days from the date of mailing this notice, a claim
23 shall be forever barred, unless otherwise allowed or paid.

24 Dated this _____ day of _____, (year)____.
25 _____ Trust

26 _____
27 Trustee
28 Address: _____
29 _____

30 Date of second publication _____ day of _____,
31 (year) ____.

32 5. The claimant either must receive satisfaction of its
33 claim within-sixty-days-of-mailing-its-claim-to-the-trustee,
34 or must file suit against the trust to enforce collection of
35 the creditor's claim within sixty days of mailing its claim to

1 the trustee. The trustee and creditor may agree to extend the
2 limitations period for filing an action to enforce the claim.
3 If the claimant fails to properly file its claim within the
4 established time period or bring an action to enforce its
5 claim within the established time period, the creditor's claim
6 shall be forever barred.

7 Sec. 19. Section 633.3111, subsection 2, as enacted by
8 1999 Iowa Acts, chapter 125, section 35, is amended to read as
9 follows:

10 2. A trustee shall be entitled to indemnification from the
11 beneficiaries for all amounts paid to creditors under this
12 section, to the extent of distributions made.

13 Sec. 20. Section 633.4101, as enacted by 1999 Iowa Acts,
14 chapter 125, section 36, is amended to read as follows:

15 633.4101 ACCEPTANCE OR REJECTION-OF-TRUST-BY DECLINATION
16 TO SERVE AS TRUSTEE.

17 1. A person named as trustee accepts the office of trustee
18 by doing one of the following:

19 a. Signing the trust instrument, or signing a separate
20 written acceptance.

21 b. Except as provided in subsection 3, knowingly accepting
22 delivery of the trust property or exercising powers or
23 performing duties as trustee.

24 2. A person named as trustee who has not yet accepted the
25 office of trustee may in writing ~~reject-the-trust~~ decline to
26 serve as trustee.

27 3. If there is an immediate risk of damage to the trust
28 property, the person named as trustee may act to preserve the
29 trust property without accepting the office of trustee, if
30 within a reasonable time after acting, the person delivers a
31 written ~~rejection-of-the-trust~~ declination to serve to the
32 settlor, or if the settlor is dead or lacks capacity, to the
33 beneficiaries eligible to receive income or principal
34 distributions from the trust.

35 Sec. 21. Section 633.4104, subsection 1, as enacted by

1 1999 Iowa Acts, chapter 125, section 39, is amended to read as
2 follows:

3 1. The person named as trustee rejects-the-trust declines
4 to serve as trustee.

5 Sec. 22. Section 633.4105, as enacted by 1999 Iowa Acts,
6 chapter 125, section 40, is amended to read as follows:

7 633.4105 FILLING VACANCY.

8 1--For purposes of this section, "adult beneficiaries"
9 shall not include either of the following:

10 a--Beneficiaries who are not competent and are not
11 represented by a guardian, conservator, or agent;

12 b--Beneficiaries who are not entitled or eligible to
13 receive trust income or a distribution of principal were the
14 trust to terminate at the time the agreement is made;

15 2- 1. A trustee must be appointed to fill a vacancy in the
16 office of the trustee only if the trust has no trustee or the
17 terms of the trust require a vacancy in the office of
18 cotrustee to be filled.

19 3- 2. A vacancy in the office of trustee shall be filled
20 according to the following:

21 a. By the person named in or nominated pursuant to the
22 method specified by the terms of the trust.

23 b. If the terms of the trust do not name a person or
24 specify a method for filling the vacancy, or if the person
25 named or nominated pursuant to the method specified fails to
26 accept, one of the following methods shall be used:

27 {1}--By a trust company designated by agreement of the
28 adult beneficiaries specified in subsection 1-

29 {2} (1) By majority vote of all adult beneficiaries and
30 the parent or legal guardian representative of any minor or
31 incompetent beneficiary, as defined by section 633.6303.

32 {3} (2) By a person appointed by the court on petition of
33 an interested person or of a person named as trustee by the
34 terms of the trust. The court, in selecting a trustee, shall
35 consider any nomination made by the adult beneficiaries and

1 representatives.

2 3. Beneficiaries entitled to vote are those who are
3 currently entitled or eligible to receive trust income or a
4 distribution of principal if the trust were to terminate at
5 the time of the vote.

6 Sec. 23. Section 633.4107, subsection 1, as enacted by
7 1999 Iowa Acts, chapter 125, section 42, is amended to read as
8 follows:

9 1. A trustee may be removed in accordance with the terms
10 of the trust, ~~by-the-court-on-its-own-motion,~~ or on petition
11 of a settlor, cotrustee, or beneficiary under section
12 633.6202.

13 Sec. 24. Section 633.4111, subsection 2, paragraph b, as
14 enacted by 1999 Iowa Acts, chapter 125, section 46, is amended
15 to read as follows:

16 b. Each beneficiary who was given the last preceding
17 account accounting.

18 Sec. 25. Section 633.4504 as enacted by 1999 Iowa Acts,
19 chapter 125, section 76, is amended to read as follows:

20 633.4504 LIMITATION OF ACTION AGAINST TRUSTEE FOLLOWING
21 FINAL-ACCOUNT.

22 1. Unless previously barred by adjudication, consent, or
23 other limitation, a claim against a trustee for breach of
24 trust is barred as to a beneficiary who has received a final
25 account or other report adequately disclosing the existence of
26 the claim, unless a proceeding to assert the claim is
27 commenced within one year after the ~~later~~ earlier of the
28 receipt of the account accounting or report ~~or~~ of the
29 termination of the trust relationship between the trustee and
30 beneficiary. An account or report adequately discloses the
31 existence of a claim if it provides sufficient information so
32 that the beneficiary knows of the claim or reasonably should
33 have inquired into its existence.

34 2. For the purpose of subsection 1, a beneficiary is
35 deemed to have received an account or report in the following

1 instances:

2 a. In the case of an adult who is reasonably capable of
3 understanding the account or report, if it is received by the
4 adult personally.

5 b. In the case of an adult who is not reasonably capable
6 of understanding the account or report, if it is received by
7 the adult's legal representative, including a guardian ad
8 litem or other person appointed for this purpose.

9 c. In the case of a minor, if it is received by the
10 minor's guardian or conservator or, if the minor does not have
11 a guardian or conservator, if it is received by a parent of
12 the minor who does not have a conflict of interest.

13 3. Any claim for breach of trust against a trustee who has
14 presented a final report to a beneficiary more than one year
15 prior to the effective date of this Act shall be time barred
16 unless some exception stated in this section applies which
17 tolls the statute. Any claim arising under this section
18 within one year of the effective date of the Act shall be time
19 barred after one year unless an exception applies to toll the
20 statute.

21 Sec. 26. 1999 Iowa Acts, chapter 125, section 69 is
22 repealed.

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**HOUSE FILE 2518
FISCAL NOTE**

A fiscal note for House File 2518 as passed by the House is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2518 relates to probate law and makes technical corrections to Iowa's Trust Code. The notice and reporting date schedule for delinquent inventories and reports due by law are changed by one month. Bequests of \$10,000 or less to a minor are to be paid to a custodian of the minor without a court order. The Bill specifies that when a divorce of a testator revokes will provisions relating to the testator's spouse, the revocation includes dispositions, appointments of property, or nominations to serve in a fiduciary or representative capacity. The definition of "heir" is amended as it relates to those who are to receive notice of probate. House File 2518 includes notice to grandparents or issue of grandparents, in addition to the decedent's children and parents, in line with those entitled to inherit from an intestate estate.

ASSUMPTIONS

The Bill makes policy changes to Iowa's probate law. House File 2518 makes technical corrections to Iowa's Trust Code.

FISCAL IMPACT

House File 2518 has no fiscal impact.

SOURCES

Office of the State Court Administrator
Iowa State Bar Association

(LSB 5716HV.2, BAL)

FILED MARCH 20, 2000

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2518

AN ACT

RELATING TO PROBATE AND TRUST LAW, INCLUDING CERTAIN NOTIFICATION PROVISIONS, CERTAIN DISTRIBUTIONS TO MINORS, THE EFFECT OF DISSOLUTION OF MARRIAGE ON WILL PROVISIONS, POWERS OF ATTORNEY, AND MAKING CERTAIN AMENDMENTS TO THE IOWA TRUST CODE.

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

Section 1. Section 633.32, subsections 1 and 2, Code 1999, are amended to read as follows:

1. On May June 1 and November December 1 of each year, the clerk shall notify the fiduciary and the fiduciary's attorney of any delinquent inventories or reports due by law in any pending estate, trust, guardianship, or conservatorship, and that unless such delinquent inventory or report is filed within sixty days thereafter, the matter shall be reported to the presiding judge. If the delinquent inventory is not filed within the time so specified, the fiduciary will be subject to removal under the provisions of section 633.65 of this Code.

2. On ~~July~~ August 1 and ~~January~~ February 1 of each year, the clerk shall report to the presiding judge all delinquent inventories or reports in estates, trusts, guardianships or conservatorships on which such notice has been given and no report or inventory has been filed in response to the notice.

Sec. 2. Section 633.108, Code 1999, is amended to read as follows:

633.108 SMALL DISTRIBUTIONS TO MINORS -- PAYMENT.

Whenever a minor becomes entitled under the terms of a will to a bequest or legacy, to a share of the estate of an intestate, or to a beneficial interest in a trust fund upon the distribution of the trust fund, and the value of the bequest, legacy, share, or interest does not exceed the sum of

~~ten thousand dollars, and a conservator for the minor has not been appointed, the court having jurisdiction of the distribution of the funds may, in its discretion, upon the application of the fiduciary, enter an order authorizing the fiduciary to pay the bequest, legacy, share, or interest the personal representative or trustee may pay the bequest, legacy, share, or interest to a custodian under any uniform transfers to minors Act. Receipt by the custodian, when presented to the court or filed with the report of distribution of the fiduciary, shall have the same force and effect as though the payment had been made to a duly appointed and qualified conservator for the minor.~~

Sec. 3. Section 633.271, Code 1999, is amended to read as follows:

633.271 EFFECT OF DIVORCE OR DISSOLUTION.

If after making a will the testator is divorced or the marriage is dissolved, all provisions in the will in favor of the testator's spouse, including but not limited to dispositions, appointments relating to property, and nominations to serve in any fiduciary or representative capacity, are thereby revoked. In the event the testator and spouse remarry each other, the provisions of the will revoked by the divorce or dissolution of marriage shall be reinstated unless otherwise revoked by the testator.

Sec. 4. Section 633.304, unnumbered paragraph 2, Code 1999, is amended to read as follows:

As used in this section, "heir" means only such person as would, in an intestate estate, be entitled to a share under section 633.219, subsection 1, 2, or 3, or 4 of section 633-219.

Sec. 5. Section 633.305, unnumbered paragraph 2, Code 1999, is amended to read as follows:

As used in this section, "heir" means only such person as would, in an intestate estate, be entitled to a share under section 633.219, subsection 1, 2, or 3, or 4 of section 633-219.

Sec. 6. Section 633.705, Code 1999, is amended to read as follows:

633.705 WHEN POWER OF ATTORNEY NOT AFFECTED BY DISABILITY.

1. Whenever a principal designates another the principal's attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal", or "This power of attorney shall become effective upon the disability of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal and the principal's heirs, devisees and personal representatives as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal, and the conservator shall have the power to revoke the power of attorney on behalf of the principal.

2. An affidavit, executed by the attorney in fact or agent stating that the attorney in fact or agent did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death or by the act of the principal, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument

which is recordable, the affidavit when properly acknowledged is also recordable.

Sec. 7. Section 633.1102, subsection 15, as enacted by 1999 Iowa Acts, chapter 125, section 2, is amended to read as follows:

15. "Term" or "terms", when used in relation to a trust, means the manifestation of the settlor's intent regarding a trust's provisions at the time of the trust's creation or amendment. "Term" includes those concepts expressed directly in writing, as well as those inferred from constructional preferences or rules, or by other proof admissible under the rules of evidence.

Sec. 8. Section 633.2106, subsections 1 and 2, as enacted by 1999 Iowa Acts, chapter 125, section 13, are amended to read as follows:

1. Where the owner of property gratuitously transfers the property and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate as a resulting trust for the transferor or the transferor's estate, unless ~~at~~ either of the following is true:

- a. The transferor manifested in the trust instrument an intention that no resulting trust should arise.
- b. The intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

2. Where the owner of property gratuitously transfers the property subject to a trust which is properly declared and which has been fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or the transferor's estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

Sec. 9. Section 633.2201, as enacted by 1999 Iowa Acts, chapter 125, section 15, is amended to read as follows:

633.2201 TERMINATION OR MODIFICATION OF TRUST.

1. In addition to the methods specified in sections 633.2202 through 633.2205, a trust terminates when any of the following occurs:

- a. The term of the trust expires.
 - b. The trust purpose is fulfilled.
 - c. The trust purpose becomes unlawful or impossible to fulfill.
 - d. The trust is revoked.
2. On termination of a trust, the trustee may exercise the powers necessary to wind up the affairs of the trust and distribute the trust property to those entitled to the trust property.

3. For purposes of sections 633.2202 through 633.2205, a beneficiary is limited to a person that is an eligible recipient of income or principal, or would receive principal or income from the trust if it were terminated.

Sec. 10. Section 633.2203, as enacted by 1999 Iowa Acts, chapter 125, section 17, is amended to read as follows:

633.2203 MODIFICATION OR TERMINATION OF IRREVOCABLE TRUST IF NO MATERIAL PURPOSE.

1. An irrevocable trust may be terminated or modified either by the court or upon with the consent of all of the beneficiaries if continuance of the trust on the same or different terms is not necessary to carry out a material purpose.

~~2. Upon petition to the court by the settlor, trustee, or other interested person, the court may set aside an improper termination or modification by the beneficiaries.~~

3. 2. Upon termination of the trust, the trustee court shall distribute order the distribution of trust property in accordance with the probable intention of the settlor ~~or as agreed by the beneficiaries.~~

~~4.~~ 3. For purposes of this section, the consent of a person who may bind a beneficiary is considered the consent of the beneficiary.

Sec. 11. 1999 Iowa Acts, chapter 125, is amended by adding the following new section:

SEC. 110. NEW SECTION. 633.2203A MODIFICATION OF ADMINISTRATIVE PROVISIONS BY COURT FOR CHANGE OF CIRCUMSTANCES.

On petition by a trustee or beneficiary, the court may modify the administrative provisions of the trust, if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. If necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

Sec. 12. Section 633.2206, subsection 1, as enacted by 1999 Iowa Acts, chapter 125, section 20, is amended to read as follows:

1. A trustee, without approval of court, may combine two or more trusts with substantially similar beneficial interests unless the trust is a court reporting trust.

Sec. 13. Section 633.2207, as enacted by 1999 Iowa Acts, chapter 125, section 21, is amended to read as follows:

633.2207 DIVISION OF TRUSTS.

1. Without approval of a court, a trustee may divide a trust into two or more separate trusts with substantially similar terms if the division will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries unless the trust is a court reporting trust.

2. On petition by a trustee or beneficiary, the court may divide a trust into two or more separate trusts, whether or not their terms are similar, if the court determines that dividing the trust is in the best interest of the

beneficiaries and will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries. To facilitate the division, the trustee may divide the trust assets in kind, by pro rata or non-pro rata division, or by any combination of the methods.

Sec. 14. Section 633.3101, subsection 1, as enacted by 1999 Iowa Acts, chapter 125, section 25, is amended to read as follows:

1. ~~The competency necessary to~~ To create, revoke, or modify a revocable trust, ~~that contains dispositive provisions upon the death of the settlor is the same as the competency required to make a will~~ must be competent. An aggrieved person shall have all causes of action and remedies available to the aggrieved person in attacking the creation, revocation, or modification of a revocable trust as one would if attacking the propriety of the execution of a will.

Sec. 15. Section 633.3104, subsection 2, as enacted by 1999 Iowa Acts, chapter 125, section 28, is amended to read as follows:

2. Following the death of a settlor, the property of a revocable trust subject to the settlor's power of revocation at the time of death is subject to the claims of the settlor's creditors and costs of administration of the settlor's estate to the extent of the value of the property over which the ~~settlor's~~ settlor had a power of revocation and, if the settlor's estate is inadequate to satisfy those claims and costs.

Sec. 16. Section 633.3107, subsection 1, as enacted by 1999 Iowa Acts, chapter 125, section 31, is amended to read as follows:

1. If, after executing a revocable trust, the settlor is divorced or the settlor's marriage is dissolved, all provisions in the trust in favor of the settlor's spouse including, but not limited to, dispositions, appointments of property, and nominations to serve in any fiduciary or

representative capacity are revoked by divorce or dissolution of marriage.

Sec. 17. Section 633.3108, as enacted by 1999 Iowa Acts, chapter 125, section 32, is amended to read as follows:

633.3108 LIMITATION ON CONTEST OF REVOCABLE TRUST.

Unless notice is given as provided in section 633.3109, the following provisions shall apply:

1. Unless previously barred by adjudication, consent, or other limitation, a proceeding to contest the validity of a revocable trust must be brought no later than one year following the death of the settlor.

2. Unless the trustee is a party to a pending proceeding contesting its validity, six months following the death of the settlor, the trustee of a revocable trust may assume the trust's validity and proceed to distribute the trust property in accordance with the terms of the trust, without liability for so doing. Liability for an improper distribution in such a case is solely on the beneficiaries.

~~3. If notice is given pursuant to section 633.3109, the six-month period in subsection 2 is ineffectual and the applicable time period shall be determined by section 633.3109.~~

Sec. 18. Section 633.3109, as enacted by 1999 Iowa Acts, chapter 125, section 33, is amended to read as follows:

633.3109 NOTICE TO CREDITORS, HEIRS, SPOUSE, AND BENEFICIARIES.

1. As used in this section, "intestate heir" means only such person as would, in an intestate estate, be entitled to a share under section 633.219, subsection 1, 2, or 3, or 4.

2. A creditor of a deceased settlor of a revocable trust must bring suit to enforce its claim against the assets of the decedent's trust within one year of the decedent's death or be forever barred from collection against the trust assets. If a probate administration is commenced for the decedent and notice is properly given pursuant to section 633.230 or

633.304, a creditor's rights shall be determined under those sections and section 633.3104.

3. If no notice is given to creditors and heirs pursuant to subsection 2, a creditor's rights may be established or terminated if the trustee gives notice as follows:

a. The trustee shall publish a notice once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the settlor was domiciled decedent was a resident at the time of death, and in any county of which the decedent was a nonresident but in which some real estate of the trust is located. If the decedent was not a resident of Iowa, but the principal place of administration is in Iowa, the trustee shall publish notice in the county that is the principal place of administration pursuant to section 633.6102.

~~b. If the decedent was a nonresident of the county in which some real estate of the trust is located, and~~ at any time during the pendency of the trust administration the trustee has knowledge of the name and address of a person believed to own or possess a claim which will not, or may not, be paid or otherwise satisfied during administration, the trustee shall provide a notice by ordinary mail to each such claimant at the claimant's last known address.

c. As soon as practicable, the trustee shall give a notice by ordinary mail to the surviving spouse, the intestate heirs of the decedent, and each beneficiary under the trust whose identities are reasonably ascertainable, at such person's last known addresses.

d. The notice in paragraphs "a", "b", and "c" shall include notification of the decedent's death, and the fact that any action to contest the validity of the trust must be brought within the later to occur of sixty days from the date of the second publication of the notice made pursuant to paragraph "a" or thirty days from the date of mailing of the notice pursuant to paragraph "b" or "c". A person who does

not make a claim within the appropriate period is forever barred.

e. The trustee shall give notice to debtors to make payment, and to creditors having claims against the trust assets to mail proof of their claim to the trustee via certified mail, return receipt requested, within the later to occur of sixty days from the second publication of the notice or thirty days from the date of mailing of the notice, or thereafter be forever barred.

4. The notice described in subsection 3 shall be substantially in the following form:

To all persons regarding _____, deceased, who died on or about _____, (year)____. You are hereby notified that _____ is the trustee of the _____ Trust. At this time, no probate administration is contemplated with regard to the above-referenced decedent's estate.

Any action to contest the validity of the trust must be brought in the District Court of _____ County, Iowa, within the later to occur of sixty days from the date of second publication of this notice, or thirty days from the date of mailing this notice to all heirs of the decedent, spouse of the decedent, and beneficiaries under the trust whose identities are reasonably ascertainable. Any claim not filed within this period shall be forever barred.

Notice is further given that all persons indebted to the decedent or to the trust are requested to make immediate payment to the undersigned trustee. Creditors having claims against the trust must mail them to the trustee at the address listed below via certified mail, return receipt requested. Unless creditor claims are mailed by the later to occur of sixty days from the second publication of this notice or thirty days from the date of mailing this notice, a claim shall be forever barred, unless otherwise allowed or paid.

Dated this _____ day of _____, (year)_____.

Trust

Trustee

Address:

Date of second publication _____ day of _____, (year) _____.

5. The claimant either must receive satisfaction of its claim ~~within sixty days of mailing its claim to the trustee,~~ or must file suit against the trust to enforce collection of the creditor's claim within sixty days of mailing its claim to the trustee. The trustee and creditor may agree to extend the limitations period for filing an action to enforce the claim. If the claimant fails to properly file its claim within the established time period or bring an action to enforce its claim within the established time period, the creditor's claim shall be forever barred.

Sec. 19. Section 633.3111, subsection 2, as enacted by 1999 Iowa Acts, chapter 125, section 35, is amended to read as follows:

2. A trustee shall be entitled to indemnification from the beneficiaries for all amounts paid to creditors under this section, to the extent of distributions made.

Sec. 20. Section 633.4101, as enacted by 1999 Iowa Acts, chapter 125, section 36, is amended to read as follows:

633.4101 ACCEPTANCE OR ~~REJECTION OF TRUST BY~~ DECLINATION TO SERVE AS TRUSTEE.

1. A person named as trustee accepts the office of trustee by doing one of the following:

a. Signing the trust instrument, or signing a separate written acceptance.

b. Except as provided in subsection 3, knowingly accepting delivery of the trust property or exercising powers or performing duties as trustee.

2. A person named as trustee who has not yet accepted the office of trustee may in writing ~~reject the trust~~ decline to serve as trustee.

3. If there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the office of trustee, if within a reasonable time after acting, the person delivers a ~~written rejection of the trust~~ declination to serve to the settlor, or if the settlor is dead or lacks capacity, to the beneficiaries eligible to receive income or principal distributions from the trust.

Sec. 21. Section 633.4104, subsection 1, as enacted by 1999 Iowa Acts, chapter 125, section 39, is amended to read as follows:

1. The person named as trustee ~~rejects the trust~~ declines to serve as trustee.

Sec. 22. Section 633.4105, as enacted by 1999 Iowa Acts, chapter 125, section 40, is amended to read as follows:

633.4105 FILLING VACANCY.

~~1. For purposes of this section, "adult beneficiaries" shall not include either of the following:~~

~~a. Beneficiaries who are not competent and are not represented by a guardian, conservator, or agent;~~

~~b. Beneficiaries who are not entitled or eligible to receive trust income or a distribution of principal were the trust to terminate at the time the agreement is made.~~

~~2. 1.~~ A trustee must be appointed to fill a vacancy in the office of the trustee only if the trust has no trustee or the terms of the trust require a vacancy in the office of cotrustee to be filled.

~~3. 2.~~ A vacancy in the office of trustee shall be filled according to the following:

a. By the person named in or nominated pursuant to the method specified by the terms of the trust.

b. If the terms of the trust do not name a person or specify a method for filling the vacancy, or if the person named or nominated pursuant to the method specified fails to accept, one of the following methods shall be used:

~~{1}--By-a-trust-company-designated-by-agreement-of-the adult-beneficiaries-specified-in-subsection-1-~~

{2} (1) By majority vote of all adult beneficiaries and the ~~parent-or-legal-guardian~~ representative of any minor or incompetent beneficiary, as defined by section 633.6303.

{3} (2) By a person appointed by the court on petition of an interested person or of a person named as trustee by the terms of the trust. The court, in selecting a trustee, shall consider any nomination made by the adult beneficiaries and representatives.

3. Beneficiaries entitled to vote are those who are currently entitled or eligible to receive trust income or a distribution of principal if the trust were to terminate at the time of the vote.

Sec. 23. Section 633.4107, subsection 1, as enacted by 1999 Iowa Acts, chapter 125, section 42, is amended to read as follows:

1. A trustee may be removed in accordance with the terms of the trust, ~~by-the-court-on-its-own-motion~~, or on petition of a settlor, cotrustee, or beneficiary under section 633.6202.

Sec. 24. Section 633.4111, subsection 2, paragraph b, as enacted by 1999 Iowa Acts, chapter 125, section 46, is amended to read as follows:

b. Each beneficiary who was given the last preceding account accounting.

Sec. 25. Section 633.4504, as enacted by 1999 Iowa Acts, chapter 125, section 76, is amended to read as follows:

633.4504 LIMITATION OF ACTION AGAINST TRUSTEE FOLLOWING ~~FINAL-ACCOUNT~~.

1. Unless previously barred by adjudication, consent, or other limitation, a claim against a trustee for breach of trust is barred as to a beneficiary who has received a final account or other report adequately disclosing the existence of the claim, unless a proceeding to assert the claim is commenced within one year after the ~~later~~ earlier of the receipt of the account accounting or report ~~or of~~ the termination of the trust relationship between the trustee and beneficiary. An account or report adequately discloses the existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into its existence.

2. For the purpose of subsection 1, a beneficiary is deemed to have received an account or report in the following instances:

a. In the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally.

b. In the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the adult's legal representative, including a guardian ad litem or other person appointed for this purpose.

c. In the case of a minor, if it is received by the minor's guardian or conservator or, if the minor does not have a guardian or conservator, if it is received by a parent of the minor who does not have a conflict of interest.

3. Any claim for breach of trust against a trustee who has presented a final report to a beneficiary more than one year prior to the effective date of this Act shall be time barred unless some exception stated in this section applies which tolls the statute. Any claim arising under this section within one year of the effective date of the Act shall be time barred after one year unless an exception applies to toll the statute.

Sec. 26. 1999 Iowa Acts, chapter 125, section 69, is repealed.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2518, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved 4/26, 2000

THOMAS J. VILSACK
Governor