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SF 366 substituted

APR 9 2003  
WAYS & MEANS CALENDAR

HOUSE FILE 670  
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 554)  
(SUCCESSOR TO HSB 210)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the Iowa probate code, including provisions  
2 relating to state inheritance, gift taxes, and trusts and  
3 including an applicability date provision.

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

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HF 670

1 Section 1. Section 450.1, Code 2003, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4 450.1 DEFINITIONS -- CONSTRUCTION.

5 1. For purposes of this chapter, unless the context  
6 otherwise requires:

7 a. "Internal Revenue Code" means the same as defined in  
8 section 422.3.

9 b. "Person" includes plural as well as singular, and  
10 artificial as well as natural persons.

11 c. "Personal representative" means an administrator,  
12 executor, or trustee as each is defined in section 633.3.

13 d. "Real estate or real property" for the purpose of  
14 appraisal under this chapter means real estate which is the  
15 land and appurtenances, including structures affixed thereto.

16 e. "Stepchild" means the child of a person who was married  
17 to the decedent at the time of the decedent's death, or the  
18 child of a person to whom the decedent was married, which  
19 person died during the marriage to the decedent.

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 specially authorized by the  
24 department to do so.

25 Sec. 2. Section 450.2, Code 2003, is amended by striking  
26 the section and inserting in lieu thereof the following:

27 450.2 TAXABLE ESTATES AND PROPERTY.

28 The following estates and property and any interest in or  
29 income from any of the following estates and property, which  
30 pass from the decedent owner in any manner described in this  
31 chapter, are subject to tax as provided in this chapter:

32 1. Real estate and tangible personal property located in  
33 this state regardless of whether the decedent was a resident  
34 of this state at death.

35 2. Intangible personal property owned by a decedent

1 domiciled in this state.

2 Sec. 3. Section 450.3, subsection 2, Code 2003, is amended  
3 to read as follows:

4 2. By deed, grant, sale, gift, or transfer made within  
5 three years of the death of the grantor or donor, which is not  
6 a bona fide sale for an adequate and full consideration in  
7 money or money's worth and which is in excess of the annual  
8 gift tax exclusion allowable for each donee under section  
9 2503, subsections b (b) and e (e), of the Internal Revenue  
10 Code. If both spouses consent, a gift made by one spouse to a  
11 person who is not the other spouse is considered, for the  
12 purposes of this subsection, as made one half by each spouse  
13 under the same terms and conditions provided for in section  
14 2513 of the Internal Revenue Code. The net market value of a  
15 transfer described in this subsection shall be the net market  
16 value determined as of the date of the transfer.

17 Sec. 4. Section 450.20, unnumbered paragraph 1, Code 2003,  
18 is amended to read as follows:

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

25 Sec. 5. Section 633.527, Code 2003, is amended to read as  
26 follows:

27 633.527 LIMITATION OF APPLICATION.

28 Sections 633.523, 633.524 and 633.526 shall not apply in  
29 the case of wills, living trusts, deeds, ~~or~~ contracts of  
30 insurance, or other contracts wherein provision has been made  
31 for distribution of property different from the provisions of  
32 said those sections.

33 Sec. 6. Section 633.1102, subsection 3, Code 2003, is  
34 amended to read as follows:

35 3. "Competency" means any one of the following:

1 a. In the case of a revocable transfer, "competency" means  
2 the degree of understanding required to execute a will.

3 b. In the case of an irrevocable transfer, "competency"  
4 means the ~~degree of understanding required to execute a~~  
5 contract ability to understand the effect the gift may have on  
6 the future financial security of the donor and anyone who may  
7 be dependent on the donor.

8 ~~c. In other circumstances not clearly relating to a~~  
9 ~~revocable or irrevocable transfer, "competency" means the~~  
10 ~~ability to make rational decisions regarding one's financial~~  
11 ~~affairs.~~

12 Sec. 7. Section 633.1105, Code 2003, is amended to read as  
13 follows:

14 633.1105 TRUST PROVISIONS CONTROL.

15 The provisions of a trust shall always control and take  
16 precedence over any section of this trust code to the  
17 contrary. If a provision of the trust instrument makes any  
18 section of this trust code inapplicable to a trust, the common  
19 law shall apply to any issues raised by such provision.

20 Sec. 8. NEW SECTION. 633.1108 GOVERNING LAW.

21 1. A trust not created by will is validly created if its  
22 creation complies with the law of the jurisdiction in which  
23 the trust instrument was executed, or the law of the  
24 jurisdiction in which at the time the trust was created the  
25 settlor was domiciled, had a place of abode, or was a  
26 national.

27 2. The meaning and effect of the terms of the trust  
28 created by will shall be determined by any of the following:

29 a. Except as provided in paragraph "c", the law of the  
30 jurisdiction designated in the terms of the trust, on the  
31 condition that at the time the trust was created the  
32 designated jurisdiction had a substantial relationship to the  
33 trust. A jurisdiction has a substantial relationship to the  
34 trust if it is the residence or domicile of the settlor or of  
35 any qualified beneficiary, the location of a substantial

1 portion of the assets of the trust, or a place where the  
2 trustee was domiciled or had a place of business.

3 b. Except as provided in paragraph "c", in the absence of  
4 a controlling designation in the terms of the trust, the law  
5 of the jurisdiction that has the most significant relationship  
6 to the matter at issue.

7 c. As to real property, the law of the jurisdiction where  
8 the real property is located.

9 Sec. 9. Section 633.2102, Code 2003, is amended to read as  
10 follows:

11 633.2102 REQUIREMENTS FOR VALIDITY.

12 1. A trust is created only if all of the following  
13 elements are satisfied:

14 a. The settlor was competent and indicated an intention to  
15 create a trust.

16 b. The same person is not the sole trustee and sole  
17 beneficiary.

18 c. The trust has a definite beneficiary or a beneficiary  
19 who will be definitely ascertained within the period of the  
20 applicable rule against perpetuities, unless the trust is a  
21 charitable trust, an honorary trust, or a trust for pets.

22 d. The trustee has duties to perform.

23 2. ~~A-definite-or-definitely-ascertainable-beneficiary~~  
24 ~~includes-a-beneficiary-or-class-of-beneficiaries-designated~~  
25 ~~under-a-power-to-select-the-beneficiaries-granted-by-the-terms~~  
26 ~~of-the-trust-to-the-trustee-or-another-person. A power in a~~  
27 trustee to select a beneficiary from an indefinite class is  
28 valid. If the power is not exercised within a reasonable  
29 time, the power fails and the property passes to the person or  
30 persons who would have taken the property had the power not  
31 been conferred.

32 3. A trust is not merged or invalid because a person,  
33 including but not limited to the settlor of the trust, is or  
34 may become the sole trustee and the sole holder of the present  
35 beneficial interest in the trust, provided that one or more

1 other persons hold a beneficial interest in the trust, whether  
2 such interest be vested or contingent, present, or future, and  
3 whether created by express provision of the instrument or as a  
4 result of reversion to the settlor's estate.

5 Sec. 10. Section 633.2103, subsections 2 and 3, Code 2003,  
6 are amended to read as follows:

7 2. If an owner of property declares that property is held  
8 upon a trust ~~for which a written instrument is required~~, the  
9 written instrument evidencing the trust must be signed by the  
10 settlor according to one of the following:

11 a. Before or at the time of the declaration.

12 b. After the time of the declaration but before the  
13 settlor has transferred the property.

14 3. If an owner of property while living transfers property  
15 to another person to hold upon a trust ~~for which a written~~  
16 ~~instrument is required~~, the written instrument evidencing the  
17 trust must be signed according to one of the following:

18 a. By the settlor, concurrently with or before the  
19 transfer.

20 b. By the trustee, concurrently with or before the  
21 transfer, or after the transfer but before the trustee has  
22 transferred the property to a third person.

23 Sec. 11. Section 633.2103, Code 2003, is amended by adding  
24 the following new subsection:

25 NEW SUBSECTION. 4. Oral trusts that have not been reduced  
26 to writing as specified in this section are not enforceable.  
27 This section does not affect the power of a court to declare a  
28 resulting or constructive trust in the appropriate case or to  
29 order other relief where appropriate.

30 Sec. 12. Section 633.4105, subsection 2, paragraph b,  
31 subparagraph (2), Code 2003, is amended to read as follows:

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

1 representatives of any minor and incompetent beneficiaries as  
2 designated in section 633.6303.

3 Sec. 13. Section 633.4107, subsection 2, Code 2003, is  
4 amended by adding the following new paragraph:

5 NEW PARAGRAPH. ee. If the trustee merges with another  
6 institution or the location or place of administration of the  
7 trust changes.

8 Sec. 14. Section 633.4207, Code 2003, is amended by  
9 striking the section and inserting in lieu thereof the  
10 following:

11 633.4207 DIRECTORY POWERS.

12 1. While a trust is revocable, the trustee may follow a  
13 written direction of the settlor that is contrary to the terms  
14 of the trust.

15 2. If the terms of the trust confer upon a person other  
16 than the settlor of a revocable trust power to direct certain  
17 actions of the trustee, the trustee shall act in accordance  
18 with an exercise of the power unless the trustee knows the  
19 attempted exercise violates the terms of the trust or the  
20 trustee knows that the person holding the power is  
21 incompetent.

22 3. A person other than a beneficiary who holds a power to  
23 direct is presumptively a fiduciary who is required to act in  
24 good faith with regard to the purposes of the trust and the  
25 interests of the beneficiaries. The holder of a power to  
26 direct is liable for any loss that results from a breach of a  
27 fiduciary duty.

28 Sec. 15. Section 633.4213, subsections 1, 3, 6, and 7,  
29 Code 2003, are amended to read as follows:

30 1. The trustee shall inform each qualified beneficiary of  
31 the beneficiary's right to receive an annual accounting and a  
32 copy of the trust instrument. The trustee shall also inform  
33 each qualified beneficiary about the process necessary to  
34 obtain an annual accounting or a copy of the trust instrument,  
35 if not provided. The trustee shall further inform the each

1 qualified beneficiary whether the beneficiary will, or will  
2 not, receive an annual accounting if the beneficiary fails to  
3 take any action. If a qualified beneficiary has previously  
4 been provided the notice required by this section, additional  
5 notice shall not be required due to a change of trustees or a  
6 change in the composition of the qualified beneficiaries.

7 3. A trustee of an irrevocable trust shall provide  
8 annually to each adult beneficiary and the representative of  
9 any minor or incompetent beneficiary who may receive a  
10 distribution of income or principal during the accounting time  
11 period, an accounting, unless an accounting has been waived  
12 specifically for ~~a-particular~~ that accounting time period.

13 6. The format and content of an accounting required by  
14 this section shall be within the discretion of the trustee, ~~if~~  
15 as long as sufficient to reasonably inform the beneficiary of  
16 the condition and activities of the trust during the  
17 accounting period.

18 7. This section does not apply to any trust created prior  
19 to July 1, 2002. This section applies to any trust created on  
20 or after July 1, 2002, unless the ~~trustor~~ settlor has  
21 specifically waived the requirements of this section in the  
22 trust instrument. Waiver of this section shall not bar any  
23 beneficiary's common-law right to an accounting, and shall not  
24 provide any immunity to a trustee, acting under the terms of  
25 the trust, for liability to any beneficiary who discovers  
26 facts giving rise to a cause of action against the trustee.

27 Sec. 16. Section 633.4214, subsection 3, paragraph c,  
28 subparagraph (3), Code 2003, is amended to read as follows:

29 (3) A trust, if contributions to the trust ~~which~~ qualify  
30 for an annual exclusion under section 2503(c) of the Internal  
31 Revenue Code of 1986.

32 Sec. 17. Section 633.4506, subsection 2, paragraph c, Code  
33 2003, is amended to read as follows:

34 c. The trustee did not reasonably believe that the  
35 beneficiary knew the beneficiary's rights ~~or~~ and that the

1 beneficiary knew material facts known to the trustee or which  
2 the trustee should have known.

3 Sec. 18. Section 633.4701, subsection 5, Code 2003, is  
4 amended to read as follows:

5 5. If both the beneficiary of an interest and any  
6 alternate beneficiary of that interest named in the trust die  
7 prior to the interest becoming possessory, and neither the  
8 beneficiary nor the alternate beneficiary has issue who are  
9 living on the date the interest becomes possessory, the  
10 beneficiary's interest shall be distributed to the takers of  
11 the settlor's residuary estate, or, if the trust is the sole  
12 taker of the settlor's residuary estate, in accordance with  
13 section 633.2106.

14 Sec. 19. Section 633.4701, Code 2003, is amended by adding  
15 the following new subsections:

16 NEW SUBSECTION. 6. If both the beneficiary of an interest  
17 and any alternate beneficiary of that interest named in the  
18 trust die prior to the interest becoming possessory, and both  
19 the beneficiary and the alternate beneficiary have issue who  
20 are living on the date the interest becomes possessory, the  
21 issue of the beneficiary succeed to the interest of the  
22 beneficiary. The issue of the alternate beneficiary shall not  
23 succeed to any part of the interest of the beneficiary.

24 NEW SUBSECTION. 7. For the purposes of this section,  
25 persons appointed under a power of appointment shall be  
26 considered beneficiaries under this section and takers in  
27 default of appointment designated by the instrument creating  
28 the power of appointment shall be considered alternate  
29 beneficiaries under this section.

30 NEW SUBSECTION. 8. Subsections 2, 3, 4, 5, 6, and 7 do  
31 not apply to any interest subject to an express condition of  
32 survivorship imposed by the terms of the trust. For the  
33 purposes of this section, words of survivorship including, but  
34 not limited to, "my surviving children", "if a person  
35 survives" a named period, and terms of like import, shall be

1 construed to create an express condition of survivorship.  
2 Words of survivorship include language requiring survival to  
3 the distribution date or to any earlier or unspecified time,  
4 whether those words are expressed in condition precedent,  
5 condition subsequent, or any other form.

6 NEW SUBSECTION. 9. If an interest to which this section  
7 applies is given to a class, other than a class described as  
8 "issue", "descendants", "heirs of the body", "heirs", "next of  
9 kin", "relatives", or "family", or a class described by  
10 language of similar import, the members of the class who are  
11 living on the date on which the class becomes entitled to  
12 possession or enjoyment of the interest shall be considered as  
13 alternate beneficiaries under this section. However, neither  
14 the residuary beneficiaries under the settlor's will nor the  
15 settlor's heirs shall be considered as alternate beneficiaries  
16 for the purposes of this section.

17 Sec. 20. Section 633.6105, Code 2003, is amended by adding  
18 the following new subsection:

19 NEW SUBSECTION. 6. Without precluding the right of the  
20 court to order, approve, or disapprove a transfer, the  
21 trustee, in furtherance of the trustee's duty to administer  
22 the trust at a place appropriate to its purpose or  
23 administration, and the interests of the beneficiaries, may  
24 transfer the trust's principal place of administration to  
25 another state or to a jurisdiction outside the United States.

26 Sec. 21. Section 633.6301, subsections 3, 4, and 5, Code  
27 2003, are amended to read as follows:

28 ~~3.--Except to the extent the terms of the trust indicate~~  
29 ~~that the procedures specified are not to apply, a person~~  
30 ~~interested in a fiduciary matter may approve a nonjudicial~~  
31 ~~settlement containing such terms and conditions as a court~~  
32 ~~could properly approve and represent and bind other persons~~  
33 ~~interested in the fiduciary matter.~~

34 ~~4.~~ 3. Notice to a person who may represent and bind  
35 another person under this ~~chapter~~ trust code has the same

1 effect as if notice were given directly to the person  
2 represented.

3 ~~5-~~ 4. The consent of a person who may represent and bind  
4 another person under this ~~chapter~~ trust code is binding on the  
5 person represented unless the person represented objects to  
6 the representation before the consent would otherwise have  
7 become effective.

8 Sec. 22. NEW SECTION. 633.6308 NONJUDICIAL SETTLEMENT  
9 AGREEMENTS.

10 1. For purposes of this subpart, "interested persons"  
11 means persons whose consent would be required in order to  
12 achieve a binding settlement were the settlement to be  
13 approved by the court.

14 2. Except as otherwise provided in subsection 3, or as to  
15 a modification or termination of a trust under section  
16 633.2203, interested persons may enter into a binding  
17 nonjudicial settlement agreement with respect to any matter  
18 involving a trust.

19 3. A nonjudicial settlement is valid only to the extent  
20 the settlement does not violate a material purpose of the  
21 trust and includes terms and conditions that could be properly  
22 approved by the court under this trust code or other  
23 applicable law.

24 4. Matters that may be resolved by a nonjudicial  
25 settlement agreement include any of the following:

26 a. The interpretation or construction of the terms of the  
27 trust.

28 b. The approval of a trustee's report or accounting.

29 c. Direction to a trustee to refrain from performing a  
30 particular act or the grant to a trustee of any necessary or  
31 desirable power.

32 d. The resignation or appointment of a trustee and the  
33 determination of a trustee's compensation.

34 e. The transfer of a trust's principal place of  
35 administration.

1 f. The liability of a trustee for an action relating to  
2 the trust.

3 5. Any interested person may request the court to approve  
4 a nonjudicial settlement agreement, to determine whether the  
5 representation provided was adequate, and to determine whether  
6 the agreement contains terms and conditions the court could  
7 have properly approved.

8 Sec. 23. Section 450.91, Code 2003, is repealed.

9 Sec. 24. Sections 1, 2, 3, 4, and 23 of this Act apply to  
10 estates of decedents dying on or after July 1, 2003.

11

EXPLANATION

12 This bill provides for a number of amendments to the Iowa  
13 probate code, including provisions relating to state  
14 inheritance and gift taxes.

15 The bill amends provisions of Code chapter 450, relating to  
16 the state inheritance and estate taxes, as follows:

17 Code section 450.1 is amended to define a stepchild as a  
18 child of a person who was married to the decedent at the time  
19 of the decedent's death or a child of a person who died while  
20 married to the decedent.

21 Code section 450.2 is amended to exempt from tax intangible  
22 personal property owned by a decedent who was not domiciled in  
23 Iowa.

24 Code section 450.3, subsection 2, is amended to provide  
25 that the net market value of property transferred for less  
26 than full consideration within three years of the decedent's  
27 death shall be determined as of the date of the transfer.

28 Code section 450.20 is amended to specify that the  
29 department of revenue and finance must keep a separate record  
30 of any deferred estate where the tax is not paid on or before  
31 the last day of the ninth month after the death of the  
32 decedent.

33 Code section 450.91 regarding reciprocal transfer tax  
34 provisions under which nonresidents are exempt from certain  
35 taxes on personal property is repealed.

1 The foregoing provisions for this bill apply to estates of  
2 decedents dying on or after July 1, 2003.

3 The bill further provides a number of amendments to the  
4 Iowa probate code as follows:

5 The bill amends provisions of the uniform simultaneous  
6 death Act to recognize other contracts in addition to wills,  
7 living trusts, deeds, or contracts of insurance that provide  
8 provisions for property distribution.

9 The bill amends the term "competency" with regard to  
10 irrevocable transfers to mean the ability to understand the  
11 effect a gift may have on the future financial security of the  
12 donor and anyone who may be dependent on the donor.

13 The bill provides that if a provision of a trust instrument  
14 makes any section of the trust code inapplicable to a trust,  
15 the common law shall apply.

16 The bill creates a new provision relating to the applicable  
17 governing law in regard to a trust created by will and a trust  
18 not created by will.

19 The bill provides that a trust instrument must specify the  
20 particular duties a trustee must perform as an additional  
21 requirement which must be met in order for a trust to be  
22 considered valid. With regard to the validity of a trust, the  
23 bill also provides that a trustee's power to select a  
24 beneficiary from an indefinite class is valid, and that a  
25 trust is not merged or considered invalid because a person is  
26 or may become both the sole trustee and the sole holder of the  
27 present beneficial interest in a trust, on the condition that  
28 one or more other persons hold a beneficial interest in the  
29 trust.

30 The bill amends statute of frauds provisions of the trust  
31 code to specify that all trusts, except constructive and  
32 resulting trusts, must be in writing.

33 The bill provides that if the trustee merges with another  
34 institution or changes the location or place where the trust  
35 is administered, the court may remove a trustee, or order

1 other appropriate relief.

2 The bill provides that, with respect to the trustee's  
3 fiduciary duties, a trustee may follow a settlor's written  
4 instructions that are contrary to the terms of the trust while  
5 the trust is revocable. The bill further provides that if the  
6 terms of the trust authorize a person other than the settlor  
7 of a revocable trust to exercise the power to direct the  
8 trustee's actions, the trustee shall act in accordance with an  
9 exercise of the power unless the trustee knows the person  
10 holding the power is incompetent. The bill provides that a  
11 person other than a beneficiary who holds a power to direct is  
12 presumptively a beneficiary who is required to act in good  
13 faith with regard to the purposes of the trust and the  
14 interests of the beneficiaries, and that the holder of a power  
15 to direct is liable for any loss that results from a breach of  
16 a fiduciary duty.

17 The bill provides language related to a trustee's duty to  
18 provide information regarding an annual accounting to a  
19 qualified beneficiary.

20 The bill adds certain rules of survivorship with respect to  
21 future interests under the terms of the trust and includes a  
22 definition of "alternate beneficiary".

23 The bill authorizes the trustee to transfer the trust's  
24 principal place of administration to another state or to a  
25 jurisdiction outside the United States.

26 The bill provides that "interested persons" may enter into  
27 a binding settlement agreement without court approval with  
28 respect to the interpretation or construction of the terms of  
29 the trust, the approval of a trustee's report or accounting, a  
30 direction to the trustee to refrain from performing a  
31 particular act or the grant to a trustee of any necessary or  
32 desirable power, the resignation or appointment of a trustee  
33 and the trustee's compensation, the transfer of a trust's  
34 principal place of administration, and the liability of a  
35 trustee for any trust action. In addition, any interested

1 person may request the court to approve the nonjudicial  
2 settlement agreement. "Interested person" is defined to mean  
3 persons whose consent would be required in order to achieve a  
4 binding settlement were the settlement to be approved by the  
5 court.

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Eichhorn, Ch  
Paulsen  
Foerge

Succeeded By  
SF 0670

HSB 210  
JUDICIARY

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON MADDOX)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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17 to the decedent at the time of the decedent's death, or the  
18 child of a person to whom the decedent was married, which  
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35 2. Intangible personal property owned by a decedent

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14 2513 of the Internal Revenue Code. The net market value of a  
15 transfer described in this subsection shall be the net market  
16 value determined as of the date of the transfer.

17 Sec. 4. Section 450.20, unnumbered paragraph 1, Code 2003,  
18 is amended to read as follows:

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

25 Sec. 5. Section 633.527, Code 2003, is amended to read as  
26 follows:

27 633.527 LIMITATION OF APPLICATION.

28 Sections 633.523, 633.524 and 633.526 shall not apply in  
29 the case of wills, living trusts, deeds, or contracts of  
30 insurance, or other contracts wherein provision has been made  
31 for distribution of property different from the provisions of  
32 said those sections.

33 Sec. 6. Section 633.1102, subsection 3, Code 2003, is  
34 amended to read as follows:

35 3. "Competency" means any one of the following:

1 a. In the case of a revocable transfer, "competency" means  
2 the degree of understanding required to execute a will.

3 b. In the case of an irrevocable transfer, "competency"  
4 means the ~~degree-of-understanding-required-to-execute-a~~  
5 contract ability to understand the effect the gift may have on  
6 the future financial security of the donor and anyone who may  
7 be dependent on the donor.

8 ~~c.--In-other-circumstances-not-clearly-relating-to-a~~  
9 ~~revocable-or-irrevocable-transfer,"competency"-means-the~~  
10 ~~ability-to-make-rational-decisions-regarding-one's-financial~~  
11 ~~affairs.~~

12 Sec. 7. Section 633.1105, Code 2003, is amended to read as  
13 follows:

14 633.1105 TRUST PROVISIONS CONTROL.

15 The provisions of a trust shall always control and take  
16 precedence over any section of this trust code to the  
17 contrary. If a provision of the trust instrument makes any  
18 section of this trust code inapplicable to a trust, the common  
19 law shall apply to any issues raised by such provision.

20 Sec. 8. NEW SECTION. 633.1108 GOVERNING LAW.

21 1. A trust not created by will is validly created if its  
22 creation complies with the law of the jurisdiction in which  
23 the trust instrument was executed, or the law of the  
24 jurisdiction in which at the time the trust was created the  
25 settlor was domiciled, had a place of abode, or was a  
26 national.

27 2. The meaning and effect of the terms of the trust  
28 created by will shall be determined by any of the following:

29 a. Except as provided in paragraph "c", the law of the  
30 jurisdiction designated in the terms of the trust, on the  
31 condition that at the time the trust was created the  
32 designated jurisdiction had a substantial relationship to the  
33 trust. A jurisdiction has a substantial relationship to the  
34 trust if it is the residence or domicile of the settlor or of  
35 any qualified beneficiary, the location of a substantial

1 portion of the assets of the trust, or a place where the  
2 trustee was domiciled or had a place of business.

3 b. Except as provided in paragraph "c", in the absence of  
4 a controlling designation in the terms of the trust, the law  
5 of the jurisdiction that has the most significant relationship  
6 to the matter at issue.

7 c. As to real property, the law of the jurisdiction where  
8 the real property is located.

9 Sec. 9. Section 633.2102, Code 2003, is amended to read as  
10 follows:

11 633.2102 REQUIREMENTS FOR VALIDITY.

12 1. A trust is created only if all of the following  
13 elements are satisfied:

14 a. The settlor was competent and indicated an intention to  
15 create a trust.

16 b. The same person is not the sole trustee and sole  
17 beneficiary.

18 c. The trust has a definite beneficiary or a beneficiary  
19 who will be definitely ascertained within the period of the  
20 applicable rule against perpetuities, unless the trust is a  
21 charitable trust, an honorary trust, or a trust for pets.

22 d. The trustee has duties to perform.

23 2. ~~A-definite-or-definitely-ascertainable-beneficiary~~  
24 ~~includes-a-beneficiary-or-class-of-beneficiaries-designated~~  
25 ~~under-a-power-to-select-the-beneficiaries-granted-by-the-terms~~  
26 ~~of-the-trust-to-the-trustee-or-another-person. A power in a~~  
27 trustee to select a beneficiary from an indefinite class is  
28 valid. If the power is not exercised within a reasonable  
29 time, the power fails and the property passes to the person or  
30 persons who would have taken the property had the power not  
31 been conferred.

32 3. A trust is not merged or invalid because a person,  
33 including but not limited to the settlor of the trust, is or  
34 may become the sole trustee and the sole holder of the present  
35 beneficial interest in the trust, provided that one or more

1 other persons hold a beneficial interest in the trust, whether  
2 such interest be vested or contingent, present, or future, and  
3 whether created by express provision of the instrument or as a  
4 result of reversion to the settlor's estate.

5 Sec. 10. Section 633.2103, subsections 2 and 3, Code 2003,  
6 are amended to read as follows:

7 2. If an owner of property declares that property is held  
8 upon a trust ~~for which a written instrument is required~~, the  
9 written instrument evidencing the trust must be signed by the  
10 settlor according to one of the following:

11 a. Before or at the time of the declaration.

12 b. After the time of the declaration but before the  
13 settlor has transferred the property.

14 3. If an owner of property while living transfers property  
15 to another person to hold upon a trust ~~for which a written~~  
16 ~~instrument is required~~, the written instrument evidencing the  
17 trust must be signed according to one of the following:

18 a. By the settlor, concurrently with or before the  
19 transfer.

20 b. By the trustee, concurrently with or before the  
21 transfer, or after the transfer but before the trustee has  
22 transferred the property to a third person.

23 Sec. 11. Section 633.2103, Code 2003, is amended by adding  
24 the following new subsection:

25 -NEW SUBSECTION. 4. Oral trusts that have not been reduced  
26 to writing as specified in this section are not enforceable.  
27 This section does not affect the power of a court to declare a  
28 resulting or constructive trust in the appropriate case or to  
29 order other relief where appropriate.

30 Sec. 12. Section 633.4105, subsection 2, paragraph b,  
31 subparagraph (2), Code 2003, is amended to read as follows:

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

1 representatives of any minor and incompetent beneficiaries as  
2 designated in section 633.6303.

3 Sec. 13. Section 633.4107, subsection 2, Code 2003, is  
4 amended by adding the following new paragraph:

5 NEW PARAGRAPH. ee. If the trustee merges with another  
6 institution or the location or place of administration of the  
7 trust changes.

8 Sec. 14. Section 633.4207, Code 2003, is amended by  
9 striking the section and inserting in lieu thereof the  
10 following:

11 633.4207 DIRECTORY POWERS.

12 1. While a trust is revocable, the trustee may follow a  
13 written direction of the settlor that is contrary to the terms  
14 of the trust.

15 2. If the terms of the trust confer upon a person other  
16 than the settlor of a revocable trust power to direct certain  
17 actions of the trustee, the trustee shall act in accordance  
18 with an exercise of the power unless the trustee knows the  
19 attempted exercise violates the terms of the trust or the  
20 trustee knows that the person holding the power is  
21 incompetent.

22 3. A person other than a beneficiary who holds a power to  
23 direct is presumptively a fiduciary who is required to act in  
24 good faith with regard to the purposes of the trust and the  
25 interests of the beneficiaries. The holder of a power to  
26 direct is liable for any loss that results from a breach of a  
27 fiduciary duty.

28 Sec. 15. Section 633.4213, subsections 1, 3, 6, and 7,  
29 Code 2003, are amended to read as follows:

30 1. The trustee shall inform each qualified beneficiary of  
31 the beneficiary's right to receive an annual accounting and a  
32 copy of the trust instrument. The trustee shall also inform  
33 each qualified beneficiary about the process necessary to  
34 obtain an annual accounting or a copy of the trust instrument,  
35 if not provided. The trustee shall further inform the each

1 qualified beneficiary whether the beneficiary will, or will  
2 not, receive an annual accounting if the beneficiary fails to  
3 take any action. If a qualified beneficiary has previously  
4 been provided the notice required by this section, additional  
5 notice shall not be required due to a change of trustees or a  
6 change in the composition of the qualified beneficiaries.

7 3. A trustee of an irrevocable trust shall provide  
8 annually to each adult beneficiary and the representative of  
9 any minor or incompetent beneficiary who may receive a  
10 distribution of income or principal during the accounting time  
11 period, an accounting, unless an accounting has been waived  
12 specifically for ~~a-particular~~ that accounting time period.

13 6. The format and content of an accounting required by  
14 this section shall be within the discretion of the trustee, ~~if~~  
15 as long as sufficient to reasonably inform the beneficiary of  
16 the condition and activities of the trust during the  
17 accounting period.

18 7. This section does not apply to any trust created prior  
19 to July 1, 2002. This section applies to any trust created on  
20 or after July 1, 2002, unless the ~~trustor~~ settlor has  
21 specifically waived the requirements of this section in the  
22 trust instrument. Waiver of this section shall not bar any  
23 beneficiary's common-law right to an accounting, and shall not  
24 provide any immunity to a trustee, acting under the terms of  
25 the trust, for liability to any beneficiary who discovers  
26 facts giving rise to a cause of action against the trustee.

27 Sec. 16. Section 633.4214, subsection 3, paragraph c,  
28 subparagraph (3), Code 2003, is amended to read as follows:

29 (3) A trust, if contributions to the trust which qualify  
30 for an annual exclusion under section 2503(c) of the Internal  
31 Revenue Code of 1986.

32 Sec. 17. Section 633.4506, subsection 2, paragraph c, Code  
33 2003, is amended to read as follows:

34 c. The trustee did not reasonably believe that the  
35 beneficiary knew the beneficiary's rights ~~or~~ and that the

1 beneficiary knew material facts known to the trustee or which  
2 the trustee should have known.

3 Sec. 18. Section 633.4701, subsection 5, Code 2003, is  
4 amended to read as follows:

5 5. If both the beneficiary of an interest and any  
6 alternate beneficiary of that interest named in the trust die  
7 prior to the interest becoming possessory, and neither the  
8 beneficiary nor the alternate beneficiary has issue who are  
9 living on the date the interest becomes possessory, the  
10 beneficiary's interest shall be distributed to the takers of  
11 the settlor's residuary estate, or, if the trust is the sole  
12 taker of the settlor's residuary estate, in accordance with  
13 section 633.2106.

14 Sec. 19. Section 633.4701, Code 2003, is amended by adding  
15 the following new subsections:

16 NEW SUBSECTION. 6. If both the beneficiary of an interest  
17 and any alternate beneficiary of that interest named in the  
18 trust die prior to the interest becoming possessory, and both  
19 the beneficiary and the alternate beneficiary have issue who  
20 are living on the date the interest becomes possessory, the  
21 issue of the beneficiary succeed to the interest of the  
22 beneficiary. The issue of the alternate beneficiary shall not  
23 succeed to any part of the interest of the beneficiary.

24 NEW SUBSECTION. 7. For the purposes of this section,  
25 persons appointed under a power of appointment shall be  
26 considered beneficiaries under this section and takers in  
27 default of appointment designated by the instrument creating  
28 the power of appointment shall be considered alternate  
29 beneficiaries under this section.

30 NEW SUBSECTION. 8. Subsections 2, 3, 4, 5, 6, and 7 do  
31 not apply to any interest subject to an express condition of  
32 survivorship imposed by the terms of the trust. For the  
33 purposes of this section, words of survivorship including, but  
34 not limited to, "my surviving children", "if a person  
35 survives" a named period, and terms of like import, shall be

1 construed to create an express condition of survivorship.  
2 Words of survivorship include language requiring survival to  
3 the distribution date or to any earlier or unspecified time,  
4 whether those words are expressed in condition precedent,  
5 condition subsequent, or any other form.

6 NEW SUBSECTION. 9. If an interest to which this section  
7 applies is given to a class, other than a class described as  
8 "issue", "descendants", "heirs of the body", "heirs", "next of  
9 kin", "relatives", or "family", or a class described by  
10 language of similar import, the members of the class who are  
11 living on the date on which the class becomes entitled to  
12 possession or enjoyment of the interest shall be considered as  
13 alternate beneficiaries under this section. However, neither  
14 the residuary beneficiaries under the settlor's will nor the  
15 settlor's heirs shall be considered as alternate beneficiaries  
16 for the purposes of this section.

17 Sec. 20. Section 633.6105, Code 2003, is amended by adding  
18 the following new subsection:

19 NEW SUBSECTION. 6. Without precluding the right of the  
20 court to order, approve, or disapprove a transfer, the  
21 trustee, in furtherance of the trustee's duty to administer  
22 the trust at a place appropriate to its purpose or  
23 administration, and the interests of the beneficiaries, may  
24 transfer the trust's principal place of administration to  
25 another state or to a jurisdiction outside the United States.

26 Sec. 21. Section 633.6301, subsections 3, 4, and 5, Code  
27 2003, are amended to read as follows:

28 ~~3. Except to the extent the terms of the trust indicate~~  
29 ~~that the procedures specified are not to apply, a person~~  
30 ~~interested in a fiduciary matter may approve a nonjudicial~~  
31 ~~settlement containing such terms and conditions as a court~~  
32 ~~could properly approve and represent and bind other persons~~  
33 ~~interested in the fiduciary matter.~~

34 ~~4.~~ 3. Notice to a person who may represent and bind  
35 another person under this chapter trust code has the same

1 effect as if notice were given directly to the person  
2 represented.

3 5- 4. The consent of a person who may represent and bind  
4 another person under this chapter trust code is binding on the  
5 person represented unless the person represented objects to  
6 the representation before the consent would otherwise have  
7 become effective.

8 Sec. 22. NEW SECTION. 633.6308 NONJUDICIAL SETTLEMENT  
9 AGREEMENTS.

10 1. For purposes of this subpart, "interested persons"  
11 means persons whose consent would be required in order to  
12 achieve a binding settlement were the settlement to be  
13 approved by the court.

14 2. Except as otherwise provided in subsection 3 or section  
15 633.2203, interested persons may enter into a binding  
16 nonjudicial settlement agreement with respect to any matter  
17 involving a trust.

18 3. A nonjudicial settlement is valid only to the extent  
19 the settlement does not violate a material purpose of the  
20 trust and includes terms and conditions that could be properly  
21 approved by the court under this trust code or other  
22 applicable law.

23 4. Matters that may be resolved by a nonjudicial  
24 settlement agreement include any of the following:

25 a. The interpretation or construction of the terms of the  
26 trust.

27 b. The approval of a trustee's report or accounting.

28 c. Direction to a trustee to refrain from performing a  
29 particular act or the grant to a trustee of any necessary or  
30 desirable power.

31 d. The resignation or appointment of a trustee and the  
32 determination of a trustee's compensation.

33 e. The transfer of a trust's principal place of  
34 administration.

35 f. The liability of a trustee for an action relating to

1 the trust.

2 5. Any interested person may request the court to approve  
3 a nonjudicial settlement agreement, to determine whether the  
4 representation provided was adequate, and to determine whether  
5 the agreement contains terms and conditions the court could  
6 have properly approved.

7 Sec. 23. Section 450.91, Code 2003, is repealed.

8 Sec. 24. Sections 1, 2, 3, 4, and 23 of this Act apply to  
9 estates of decedents dying on or after July 1, 2003.

10 EXPLANATION

11 This bill provides for a number of amendments to the Iowa  
12 probate code, including provisions relating to state  
13 inheritance and gift taxes.

14 The bill amends provisions of Code chapter 450, relating to  
15 the state inheritance and estate taxes, as follows:

16 Code section 450.1 is amended to define a stepchild as a  
17 child of a person who was married to the decedent at the time  
18 of the decedent's death or a child of a person who died while  
19 married to the decedent.

20 Code section 450.2 is amended to exempt from tax intangible  
21 personal property owned by a decedent who was not domiciled in  
22 Iowa.

23 Code section 450.3, subsection 2, is amended to provide  
24 that the net market value of property transferred for less  
25 than full consideration within three years of the decedent's  
26 death shall be determined as of the date of the transfer.

27 Code section 450.20 is amended to specify that the  
28 department of revenue and finance must keep a separate record  
29 of any deferred estate where the tax is not paid on or before  
30 the last day of the ninth month after the death of the  
31 decedent.

32 Code section 450.91 regarding reciprocal transfer tax  
33 provisions under which nonresidents are exempt from certain  
34 taxes on personal property is repealed.

35 The foregoing provisions for this bill apply to estates of

1 decedents dying on or after July 1, 2003.

2 The bill further provides a number of amendments to the  
3 Iowa probate code as follows:

4 The bill amends provisions of the uniform simultaneous  
5 death Act to recognize other contracts in addition to wills,  
6 living trusts, deeds, or contracts of insurance that provide  
7 provisions for property distribution.

8 The bill amends the term "competency" with regard to  
9 irrevocable transfers to mean the ability to understand the  
10 effect a gift may have on the future financial security of the  
11 donor and anyone who may be dependent on the donor.

12 The bill provides that if a provision of a trust instrument  
13 makes any section of the trust code inapplicable to a trust,  
14 the common law shall apply.

15 The bill creates a new provision relating to the applicable  
16 governing law in regard to a trust created by will and a trust  
17 not created by will.

18 The bill provides that a trust instrument must specify the  
19 particular duties a trustee must perform as an additional  
20 requirement which must be met in order for a trust to be  
21 considered valid. With regard to the validity of a trust, the  
22 bill also provides that a trustee's power to select a  
23 beneficiary from an indefinite class is valid, and that a  
24 trust is not merged or considered invalid because a person is  
25 or may become both the sole trustee and the sole holder of the  
26 present beneficial interest in a trust, on the condition that  
27 one or more other persons hold a beneficial interest in the  
28 trust.

29 The bill amends statute of frauds provisions of the trust  
30 code to specify that all trusts, except constructive and  
31 resulting trusts, must be in writing.

32 The bill provides that if the trustee merges with another  
33 institution or changes the location or place where the trust  
34 is administered, the court may remove a trustee, or order  
35 other appropriate relief.

1 The bill provides that, with respect to the trustee's  
2 fiduciary duties, a trustee may follow a settlor's written  
3 instructions that are contrary to the terms of the trust while  
4 the trust is revocable. The bill further provides that if the  
5 terms of the trust authorize a person other than the settlor  
6 of a revocable trust to exercise the power to direct the  
7 trustee's actions, the trustee shall act in accordance with an  
8 exercise of the power unless the trustee knows the person  
9 holding the power is incompetent. The bill provides that a  
10 person other than a beneficiary who holds a power to direct is  
11 presumptively a beneficiary who is required to act in good  
12 faith with regard to the purposes of the trust and the  
13 interests of the beneficiaries, and that the holder of a power  
14 to direct is liable for any loss that results from a breach of  
15 a fiduciary duty.

16 The bill provides language related to a trustee's duty to  
17 provide information regarding an annual accounting to a  
18 qualified beneficiary.

19 The bill adds certain rules of survivorship with respect to  
20 future interests under the terms of the trust and includes a  
21 definition of "alternate beneficiary".

22 The bill authorizes the trustee to transfer the trust's  
23 principal place of administration to another state or to a  
24 jurisdiction outside the United States.

25 The bill provides that "interested persons" may enter into  
26 a binding settlement agreement without court approval with  
27 respect to the interpretation or construction of the terms of  
28 the trust, the approval of a trustee's report or accounting, a  
29 direction to the trustee to refrain from performing a  
30 particular act or the grant to a trustee of any necessary or  
31 desirable power, the resignation or appointment of a trustee  
32 and the trustee's compensation, the transfer of a trust's  
33 principal place of administration, and the liability of a  
34 trustee for any trust action. In addition, any interested  
35 person may request the court to approve the nonjudicial

1 settlement agreement. "Interested person" is defined to mean  
2 persons whose consent would be required in order to achieve a  
3 binding settlement were the settlement to be approved by the  
4 court.

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