

1 Section 1. Section 249A.3, subsection 11, paragraph c,
2 Code Supplement 2003, is amended to read as follows:

3 c. A disclaimer of any property, interest, or right
4 pursuant to section ~~633.704~~ 633.704E constitutes a transfer of
5 assets for the purpose of determining eligibility for medical
6 assistance in an amount equal to the value of the property,
7 interest, or right disclaimed.

8 Sec. 2. Section 633.356, subsection 1, unnumbered
9 paragraph 1, Code 2003, is amended to read as follows:

10 When the gross value of the decedent's personal property
11 does not exceed twenty-five thousand dollars and there is no
12 real property or the real property passes to persons exempt
13 from inheritance tax pursuant to section 450.9 as joint
14 tenants with right of survivorship, and if forty days have
15 elapsed since the death of the decedent, the successor of the
16 decedent as defined in subsection 2 may, by filing an
17 affidavit prepared pursuant to subsection 3 or 8, and without
18 procuring letters of appointment, do any of the following with
19 respect to one or more particular items of personal property:

20 Sec. 3. Section 633.356, subsection 3, paragraph a, Code
21 2003, is amended to read as follows:

22 a. The decedent's name, social security number, and the
23 date and place of the decedent's death.

24 Sec. 4. Section 633.356, subsection 4, unnumbered
25 paragraph 3, Code 2003, is amended to read as follows:

26 Judgments rendered by any court in this state and mortgages
27 belonging to a decedent whose personal property is being
28 distributed pursuant to this section may, without prior order
29 of court, be released, discharged, or assigned, in whole or in
30 part, as to any particular property, and deeds may be executed
31 in performance of real estate contracts entered into by the
32 decedent, where an affidavit made pursuant to subsection 3 or
33 8 is filed in the office of the county recorder of the county
34 wherein any judgment, mortgage, or real estate contract
35 appears of record.

1 Sec. 5. Section 633.356, subsection 7, unnumbered
2 paragraph 1, Code 2003, is amended to read as follows:

3 If the requirements of this section are satisfied, receipt
4 by the holder of the decedent's property of the affidavit
5 under subsection 3 or 8 constitutes sufficient acquittance for
6 the payment of money, delivery of property, or transferring
7 the registered ownership of property pursuant to this chapter
8 and discharges the holder from any further liability with
9 respect to the money or property. The holder may rely in good
10 faith on the statements in the affidavit and has no duty to
11 inquire into the truth of any statement in the affidavit.

12 Sec. 6. Section 633.356, subsection 8, Code 2003, is
13 amended to read as follows:

14 8. a. When a deceased distributee is entitled to money or
15 property claimed in an affidavit presented under this section
16 with respect to a deceased person whose estate is being
17 administered in this state, the personal representative of the
18 person whose estate is being administered shall present the
19 affidavit to the court in which the estate is being
20 administered. The court shall direct the personal
21 representative to pay the money or deliver the property to the
22 person identified by the affidavit as the successor of the
23 deceased distributee to the extent that the court determines
24 that the deceased distributee was entitled to the money or
25 property under the will or the laws of intestate succession.

26 b. When the department of human services is entitled to
27 money or property of a decedent pursuant to section 249A.5,
28 subsection 2, and no affidavit has been presented by a
29 successor of the decedent as defined in subsection 2, within
30 ninety days of the date of the decedent's death, the funds in
31 the account, up to the amount of the claim of the department,
32 shall be paid to the department upon presentation by the
33 department or an entity designated by the department of an
34 affidavit to the holder of the decedent's property. Such
35 affidavit shall include the information specified in

1 subsection 3, except that the department may submit proof of
2 payment of funeral expenses as verification of the decedent's
3 death instead of a certified copy of the decedent's death
4 certificate. The amount of the department's claim shall also
5 be included in the affidavit, which shall entitle the
6 department to receive the funds as a successor of the
7 decedent. The department shall issue a refund within sixty
8 days to any claimant with a superior priority pursuant to
9 section 633.425, if notice of such claim is given to the
10 department, or to the entity designated by the department to
11 receive notice, within one year of the department's receipt of
12 funds.

13 Sec. 7. Section 633.647, subsection 7, Code 2003, is
14 amended to read as follows:

15 7. To exercise the right to disclaim on behalf of the ward
16 as provided in section ~~633.704~~ 633.704E.

17 Sec. 8. NEW SECTION. 633.704A SHORT TITLE.

18 This division shall be known and may be cited as the "Iowa
19 Uniform Disclaimer of Property Interest Act".

20 Sec. 9. NEW SECTION. 633.704B DEFINITIONS.

21 For purposes of this division, the following definitions
22 shall apply:

23 1. "Disclaimant" means the person to whom a disclaimed
24 interest or power would have passed had the disclaimer not
25 been made.

26 2. "Disclaimed interest" means the interest the
27 disclaimant refuses to accept that would have passed to the
28 disclaimant had the disclaimer not been made.

29 3. "Disclaimer" means the refusal to accept an interest in
30 or power over property.

31 4. "Fiduciary" means a personal representative, trustee,
32 agent acting under a power of attorney, or other person
33 authorized to act as a fiduciary with respect to the property
34 of another person.

35 5. "Jointly held property" means property held in the name

1 of two or more persons under an arrangement in which all
2 holders have concurrent interests and under which the last
3 surviving holder is entitled to the whole of the property.

4 6. "Person" means an individual; corporation; business
5 trust; estate; trust; partnership; limited liability company;
6 association; joint venture; government; governmental
7 subdivision, agency, or instrumentality; public corporation;
8 or any other legal or commercial entity.

9 7. "State" means a state of the United States, the
10 District of Columbia, the Commonwealth of Puerto Rico, the
11 United States Virgin Islands, or any territory or insular
12 possession subject to the jurisdiction of the United States.
13 The term includes any Indian tribe or band, or Alaskan
14 village, recognized by federal law or formally acknowledged by
15 a state.

16 8. "Trust" means any of the following:

17 a. An express trust, charitable or noncharitable, with
18 additions thereto, whenever and however created.

19 b. A trust created pursuant to a statute, judgment, or
20 decree which requires the trust to be administered in the
21 manner of an express trust.

22 Sec. 10. NEW SECTION. 633.704C SCOPE.

23 This division applies to disclaimers of any interest in or
24 power over property, whenever and however created.

25 Sec. 11. NEW SECTION. 633.704D TAX QUALIFIED DISCLAIMER.

26 Notwithstanding any other provision of this division, any
27 disclaimer or transfer that meets the requirements of section
28 2518 of the Internal Revenue Code, as now or hereafter
29 amended, or any successor statute thereto, and the regulations
30 promulgated thereunder, for the purpose of being a tax
31 qualified disclaimer with the effect that the disclaimed or
32 transferred interest is treated as never having been
33 transferred to the disclaimant is effective as a disclaimer
34 under this division.

35 Sec. 12. NEW SECTION. 633.704E POWER TO DISCLAIM --

1 GENERAL REQUIREMENTS -- WHEN IRREVOCABLE.

2 1. A person may disclaim, in whole or in part, any
3 interest in or power over property, including a power of
4 appointment, whenever and however acquired. A person may
5 disclaim the interest or power even if its creator imposed a
6 spendthrift provision or similar restriction on transfer or a
7 restriction or limitation on the right to disclaim.

8 2. Except to the extent a fiduciary's right to disclaim is
9 expressly restricted or limited by another statute of this
10 state or by the instrument creating the fiduciary
11 relationship, or a disclaimer by a fiduciary would be a breach
12 of trust, a fiduciary may disclaim, in whole or in part, any
13 interest in or power over property, including a power of
14 appointment, whether acting in a personal or representative
15 capacity. A fiduciary may disclaim the interest or power even
16 if the creator imposed a spendthrift provision or similar
17 restriction on transfer or a restriction or limitation on the
18 right to disclaim, or an instrument other than the instrument
19 that created the fiduciary relationship imposed a restriction
20 or limitation on the right to disclaim.

21 3. To be effective, a disclaimer must be in writing or
22 other record, declare the disclaimer, describe the interest or
23 power disclaimed, be signed by the person making the
24 disclaimer, and be delivered or filed in the manner provided
25 in section 633.704L. In this subsection, "record" means
26 information that is inscribed on a tangible medium or that is
27 stored in an electronic or other medium and is retrievable in
28 perceivable form.

29 4. A partial disclaimer may be expressed as a fraction,
30 percentage, monetary amount, term of years, limitation of a
31 power, or any other interest or estate in the property.

32 5. A disclaimer becomes irrevocable when it is delivered
33 or filed pursuant to section 633.704L or when it becomes
34 effective as provided in sections 633.704F through 633.704K,
35 whichever occurs later.

1 6. A disclaimer made under this division is not a
2 transfer, assignment, or release.

3 Sec. 13. NEW SECTION. 633.704F EFFECT OF DISCLAIMER OF
4 INTEREST IN PROPERTY.

5 1. As used in this section:

6 a. "Future interest" means an interest that takes effect
7 in possession or enjoyment, if at all, later than the time of
8 its creation.

9 b. "Time of distribution" means the time when a disclaimed
10 interest would have taken effect in possession or enjoyment.

11 2. Except for a disclaimer governed by section 633.704G or
12 633.704H, the following rules apply to a disclaimer of an
13 interest in property:

14 a. The disclaimer takes effect as of the time the
15 instrument creating the interest becomes irrevocable, or, if
16 the interest arose under the law of intestate succession, as
17 of the time of the intestate's death.

18 b. The disclaimed interest passes according to any
19 provision in the instrument creating the interest providing
20 for the disposition of the interest, should it be disclaimed,
21 or of disclaimed interests in general.

22 c. If the instrument does not contain a provision
23 described in paragraph "b", the following rules shall apply:

24 (1) If the disclaimant is an individual, the disclaimed
25 interest passes as if the disclaimant had died immediately
26 before the time of distribution.

27 (2) If the disclaimant is not an individual, the
28 disclaimed interest passes as if the disclaimant did not
29 exist.

30 d. Upon the disclaimer of a preceding interest, a future
31 interest held by a person other than the disclaimant takes
32 effect as if the disclaimant had died or ceased to exist
33 immediately before the time of distribution, but a future
34 interest held by the disclaimant of the preceding interest is
35 not accelerated in possession or enjoyment.

1 e. For purposes of this section, if an individual
2 disclaims a future interest not held in trust, the disclaimed
3 future interest passes as if that interest had been held in
4 trust.

5 Sec. 14. NEW SECTION. 633.704G DISCLAIMER OF RIGHTS OF
6 SURVIVORSHIP IN JOINTLY HELD PROPERTY.

7 1. Upon the death of a holder of jointly held property, a
8 surviving holder may disclaim, in whole or part, the greater
9 of the following:

10 a. A fractional share of the property determined by
11 dividing the number one by the number of joint holders alive
12 immediately before the death of the holder to whose death the
13 disclaimer relates.

14 b. All of the property, except that part of the value of
15 the entire interest attributable to the contribution furnished
16 by the disclaimant.

17 2. A disclaimer under subsection 1 takes effect as of the
18 death of the holder of jointly held property to whose death
19 the disclaimer relates.

20 3. An interest in jointly held property disclaimed by a
21 surviving holder of the property passes as if the disclaimant
22 predeceased the holder to whose death the disclaimer relates.

23 Sec. 15. NEW SECTION. 633.704H DISCLAIMER OF INTEREST BY
24 TRUSTEE.

25 If a trustee disclaims an interest in property that
26 otherwise would have become trust property, the interest does
27 not become trust property.

28 Sec. 16. NEW SECTION. 633.704I DISCLAIMER OF POWER OF
29 APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY.

30 If a holder disclaims a power of appointment or other power
31 not held in a fiduciary capacity, the following rules shall
32 apply:

33 1. If the holder has not exercised the power, the
34 disclaimer takes effect as of the time the instrument creating
35 the power becomes irrevocable.

1 2. If the holder has exercised the power and the
2 disclaimer is of a power other than a presently exercisable
3 general power of appointment, the disclaimer takes effect
4 immediately after the last exercise of the power.

5 3. The instrument creating the power is construed as if
6 the power expired when the disclaimer became effective.

7 Sec. 17. NEW SECTION. 633.704J DISCLAIMER BY APPOINTEE,
8 OBJECT, OR TAKER IN DEFAULT OF EXERCISE OF POWER OF
9 APPOINTMENT.

10 1. For purposes of this section, all of the following
11 rules shall apply:

12 a. An appointee is a person to whom a holder of a power
13 has effectively appointed the property subject to the power.

14 b. An object of a power is a person to whom a holder of a
15 power may appoint the property subject to the power sometime
16 in the future.

17 c. A taker in default of the exercise of a power of
18 appointment is a person designated by the person creating the
19 power in the holder to take the property subject to the power
20 if the power has not been effectively exercised.

21 2. A disclaimer of an interest in property by an appointee
22 of a power of appointment takes effect as of the time the
23 instrument by which the holder exercises the power becomes
24 irrevocable.

25 3. A disclaimer of an interest in property by an object or
26 taker in default of an exercise of a power of appointment
27 takes effect as of the time the instrument creating the power
28 becomes irrevocable.

29 Sec. 18. NEW SECTION. 633.704K DISCLAIMER OF POWER HELD
30 IN FIDUCIARY CAPACITY.

31 1. If a fiduciary disclaims a power held in a fiduciary
32 capacity which has not been exercised, the disclaimer takes
33 effect as of the time the instrument creating the power
34 becomes irrevocable.

35 2. If a fiduciary disclaims a power held in a fiduciary

1 capacity which has been exercised, the disclaimer takes effect
2 immediately after the last exercise of the power.

3 3. A disclaimer under this section is effective as to
4 another fiduciary if the disclaimer so provides and the
5 fiduciary disclaiming has the authority to bind the estate,
6 trust, or other person for whom the fiduciary is acting.

7 Sec. 19. NEW SECTION. 633.704L DELIVERY OR FILING.

8 1. For the purposes of this section, "beneficiary
9 designation" means an instrument, other than an instrument
10 creating a trust, naming the beneficiary of any of the
11 following:

- 12 a. An annuity or insurance policy.
- 13 b. An account with a designation for payment on death.
- 14 c. A security registered in beneficiary form.
- 15 d. A pension, profit-sharing, retirement, or other
16 employment-related benefit plan.
- 17 e. Any other nonprobate transfer at death.

18 2. Subject to subsections 3 through 12, delivery of a
19 disclaimer may be effected by personal delivery, first-class
20 mail, or any other method likely to result in its receipt.

21 3. In the case of an interest created under the law of
22 intestate succession or an interest created by will, other
23 than an interest in a testamentary trust, the following shall
24 apply:

- 25 a. A disclaimer must be delivered to the personal
26 representative of the decedent's estate.
- 27 b. If no personal representative is then serving, a
28 disclaimer must be filed with a court having jurisdiction to
29 appoint the personal representative.

30 4. In the case of an interest in a testamentary trust, one
31 of the following shall apply:

- 32 a. A disclaimer must be delivered to the trustee then
33 serving, or if no trustee is then serving, to the personal
34 representative of the decedent's estate.
- 35 b. If no personal representative is then serving, a

1 disclaimer shall be filed with a court having jurisdiction to
2 enforce the trust.

3 5. In the case of an interest in an inter vivos trust, one
4 of the following shall apply:

5 a. A disclaimer must be delivered to the trustee then
6 serving.

7 b. If no trustee is then serving, a disclaimer must be
8 filed with a court having jurisdiction to enforce the trust.

9 c. If a disclaimer is made before the time the instrument
10 creating the trust becomes irrevocable, the disclaimer must be
11 delivered to the settlor of a revocable trust or the
12 transferor of the interest.

13 6. In the case of a disclaimer of an interest created by a
14 beneficiary designation made before the time the designation
15 becomes irrevocable, the disclaimer must be delivered to the
16 person making the beneficiary designation.

17 7. In the case of a disclaimer of an interest created by a
18 beneficiary designation made after the time the designation
19 becomes irrevocable, the disclaimer must be delivered to the
20 person obligated to distribute the interest.

21 8. In the case of a disclaimer by a surviving holder of
22 jointly held property, the disclaimer must be delivered to the
23 person to whom the disclaimed interest passes.

24 9. In the case of a disclaimer by an object or taker in
25 default of an exercise of a power of appointment at any time
26 after the power was created, one of the following shall apply:

27 a. The disclaimer must be delivered to the holder of the
28 power or to the fiduciary acting under the instrument that
29 created the power.

30 b. If no fiduciary is then serving, the disclaimer must be
31 filed with a court having authority to appoint the fiduciary.

32 10. In the case of a disclaimer by an appointee of a
33 nonfiduciary power of appointment, one of the following shall
34 apply:

35 a. The disclaimer must be delivered to the holder, the

1 personal representative of the holder's estate, or to the
2 fiduciary under the instrument that created the power.

3 b. If no fiduciary is then serving, the disclaimer must be
4 filed with a court having authority to appoint the fiduciary.

5 11. In the case of a disclaimer by a fiduciary of a power
6 over a trust or estate, the disclaimer must be delivered as
7 provided in subsection 3, 4, or 5, as if the power disclaimed
8 were an interest in property.

9 12. In the case of a disclaimer of a power by an agent,
10 the disclaimer must be delivered to the principal or the
11 principal's representative.

12 13. In addition to the foregoing, all of the following
13 shall apply:

14 a. A copy of any instrument of disclaimer affecting real
15 estate shall be filed in the office of the country recorder of
16 the county where the real estate is located. Failure to file,
17 record, or register the disclaimer does not affect its
18 validity as between the disclaimant and persons to whom the
19 property interest or power passes by reason of the disclaimer.

20 b. A copy of an instrument of disclaimer, regardless of
21 its subject, may be filed with the clerk of court of the
22 county in which proceedings for administration have been
23 commenced, if applicable.

24 Sec. 20. NEW SECTION. 633.704M WHEN DISCLAIMER BARRED OR
25 LIMITED.

26 1. A disclaimer is barred by a written waiver of the right
27 to disclaim.

28 2. A disclaimer of an interest in property is barred if
29 any of the following events occur before the disclaimer
30 becomes effective:

31 a. The disclaimant accepts the interest sought to be
32 disclaimed.

33 b. The disclaimant voluntarily assigns, conveys,
34 encumbers, pledges, or transfers the interest sought to be
35 disclaimed or contracts to do so.

1 c. A judicial sale of the interest sought to be disclaimed
2 occurs.

3 3. A disclaimer, in whole or part, of the future exercise
4 of a power held in a fiduciary capacity is not barred by its
5 previous exercise.

6 4. A disclaimer, in whole or part, of the future exercise
7 of a power not held in a fiduciary capacity is not barred by
8 its previous exercise unless the power is exercisable in favor
9 of the disclaimant.

10 5. A disclaimer is barred or limited if so provided by law
11 other than this division.

12 6. A disclaimer of a power over property which is barred
13 by this section is ineffective. A disclaimer of an interest
14 in property which is barred by this section takes effect as a
15 transfer of the interest disclaimed to the persons who would
16 have taken the interest under this division had the disclaimer
17 not been barred.

18 Sec. 21. NEW SECTION. 633.704N DIVISION SUPPLEMENTED BY
19 OTHER LAW.

20 1. Unless displaced by a provision of this division, the
21 principles of law and equity supplement this division.

22 2. This division does not limit any right of a person to
23 waive, release, disclaim, or renounce an interest in or power
24 over property under a law other than this division.

25 Sec. 22. NEW SECTION. 633.704O MEDICAL ASSISTANCE
26 ELIGIBILITY.

27 A disclaimer of any property, interest, or right pursuant
28 to the provisions of this division constitutes a transfer of
29 assets for the purpose of determining eligibility for medical
30 assistance under chapter 249A in an amount equal to the value
31 of the property, interest, or right disclaimed.

32 Sec. 23. NEW SECTION. 633.704P APPLICATION TO EXISTING
33 RELATIONSHIP.

34 Except as otherwise provided in section 633.704M, an
35 interest in or power over property existing on the effective

1 date of this Act as to which the time for delivering or filing
2 a disclaimer under law superseded by this division has not
3 expired may be disclaimed after the effective date of this
4 Act.

5 Sec. 24. NEW SECTION. 633.704Q SEVERABILITY.

6 If any provision of this division or the application
7 thereof to any person or circumstance is held invalid, the
8 invalidity shall not affect other provisions or application of
9 the division which can be given effect without the invalid
10 provisions or application, and to this end, the provisions of
11 the division are severable.

12 Sec. 25. Section 633.1102, subsection 17, Code Supplement
13 2003, is amended by adding the following new paragraph:

14 NEW PARAGRAPH. m. Burial, funeral, and perpetual care
15 trusts.

16 Sec. 26. Section 633.1105, Code Supplement 2003, is
17 amended to read as follows:

18 633.1105 TRUST PROVISIONS CONTROL.

19 The provisions terms of a trust shall always control and
20 take precedence over any section of this trust code to the
21 contrary. If a provision term of the trust instrument
22 modifies or makes any section of this trust code inapplicable
23 to a the trust, the common law shall apply to any issues
24 raised by such provision term.

25 Sec. 27. Section 633.2301, Code 2003, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 633.2301 SPENDTHRIFT PROTECTION RECOGNIZED.

29 Except as otherwise provided in section 633.2302, all of
30 the following provisions shall apply:

31 1. A term of a trust providing that the interest of a
32 beneficiary is held subject to a "spendthrift trust", or words
33 of similar import, is sufficient to restrain both voluntary
34 and involuntary transfers of the beneficiary's interest.

35 2. a. A creditor or assignee of a beneficiary may reach a

1 mandatory distribution of income or principal, including a
2 distribution upon termination of the trust, if the trustee has
3 not made the distribution to the beneficiary within a
4 reasonable time after the required distribution date.

5 b. For the purposes of this subsection, "mandatory
6 distribution" means a distribution required by the express
7 terms of the trust of any of the following:

8 (1) All of the income, net income, or principal of the
9 trust.

10 (2) A fraction or percentage of the income or principal of
11 the trust.

12 (3) A specific dollar amount from the trust.

13 c. A distribution that is subject to a condition shall not
14 be considered a mandatory distribution.

15 3. If a creditor or assignee of a beneficiary is permitted
16 to reach a mandatory distribution under this section, the sole
17 remedy of the creditor or assignee shall be to apply to the
18 court having jurisdiction of the trust after such reasonable
19 period of time has expired for a judgment ordering the trustee
20 to pay to the creditor or the assignee a sum of money equal to
21 the lesser of the amount of the debt or assignment, or the
22 amount of the mandatory distribution described in subsection
23 2. No other remedy, including but not limited to, attachment
24 or garnishment of any interest in the trust, recovery of court
25 costs or attorney fees, or placing a lien of any type on any
26 trust property or on the interest of any beneficiary in the
27 trust, shall be permitted or ordered by any court. Any
28 writing signed by the beneficiary allowing any remedy other
29 than payment of the mandatory distribution not made to the
30 beneficiary within a reasonable time after the required
31 distribution date shall be void and shall not be enforced by
32 any court.

33 4. A creditor or assignee of a beneficiary of a
34 spendthrift trust shall not compel a distribution that is
35 subject to the trustee's discretion if any of the following

1 apply:

2 a. The distribution is expressed in the form of a standard
3 of distribution.

4 b. The trustee has abused its discretion.

5 Sec. 28. Section 633.2302, Code 2003, is amended to read
6 as follows:

7 633.2302 EXCEPTIONS TO SPENDTHRIFT PROTECTION.

8 A term of a trust prohibiting an involuntary transfer of a
9 beneficiary's interest shall be invalid as against claims by
10 any ~~of the following~~:

11 ~~1.--Any creditor of the beneficiary if the beneficiary is~~
12 ~~the settlor.~~

13 ~~2.--Any creditor of the beneficiary as to a distribution to~~
14 ~~be made upon an event terminating or partially terminating the~~
15 ~~trust.~~

16 Sec. 29. NEW SECTION. 633.4507 ATTORNEY FEES AND COSTS.

17 In a judicial proceeding involving the administration of a
18 trust, the court, as justice and equity may require, may award
19 costs and expenses, including reasonable attorney fees, to any
20 party, to be paid by another party or from the trust that is
21 the subject of the controversy.

22 Sec. 30. NEW SECTION. 633.4702 DISCRETIONARY LANGUAGE
23 PREVAILS OVER OTHER STANDARD.

24 In the absence of clear and convincing evidence to the
25 contrary, language in a governing instrument granting a
26 trustee discretion to make or withhold a distribution shall
27 prevail over any language in the governing instrument
28 indicating that the beneficiary may have a legally enforceable
29 right to distributions or indicating a standard for payments
30 or distributions.

31 Sec. 31. Section 633.704, Code 2003, is repealed.

32 EXPLANATION

33 This bill relates to the Iowa probate code, including
34 provisions relating to estate recovery of medical assistance
35 benefits, the power to disclaim property interests, and

1 trusts.

2 The bill allows the department of human services to obtain
3 funds in satisfaction of a decedent's medical assistance debts
4 when no successor affidavit has been presented to the court in
5 which the decedent's estate is being administered. Current
6 law provides that the only person entitled to sign an
7 affidavit to release such funds is a successor of a decedent
8 who must be a person named in the decedent's will, or an heir
9 if the decedent died intestate. The bill specifically
10 authorizes the department to sign an affidavit requesting such
11 funds up to the amount of the department's claim if no
12 affidavit has been presented by a successor of the decedent
13 within 90 days of the date of the decedent's death. The bill
14 further specifies that the decedent's social security number
15 must be provided in the affidavit.

16 The bill creates the "Iowa Uniform Disclaimer of Property
17 Interest Act", which replaces current Code section 633.704
18 relating to the same subject. The Act applies to disclaimers
19 of any interest in or power over property, including
20 disclaimers used for tax planning purposes.

21 The bill provides certain definitions and defines
22 "disclaimant" to mean a person who would have received the
23 disclaimed property or power if the disclaimer had not been
24 made, "disclaimed interest" to mean the interest that would
25 have passed to the disclaimant had the disclaimer not been
26 made, and "disclaimer" to mean the refusal to accept an
27 interest in or power over property.

28 The bill provides that any disclaimer which is qualified
29 for estate and gift tax purposes under the Internal Revenue
30 Code is also a valid disclaimer under this bill even if the
31 disclaimer does not otherwise meet the specific requirements
32 of the bill.

33 The bill specifies that persons and fiduciaries as defined
34 under the bill have broad powers to disclaim both interests in
35 and powers over property, regardless of whether the disclaimed

1 interest is vested. The bill makes ineffective any attempt to
2 limit the right to disclaim which the creator of the interest
3 or nonfiduciary power seeks to impose on a person. The bill
4 also specifies the formal requirements of a disclaimer, and
5 specifically allows a partial disclaimer of an interest in
6 property or of a power over property. The bill also specifies
7 that a disclaimer is irrevocable on the later date to occur of
8 either delivery or filing, or the effective date of the
9 disclaimer, and provides that a disclaimer must be irrevocable
10 in order to be a qualified disclaimer for tax purposes.

11 The bill provides certain rules related to the effect of a
12 disclaimer on interests in property, including both present
13 and future interests, certain rules related to a disclaimer of
14 rights of survivorship in jointly held property, a disclaimer
15 of interest by a trustee, a disclaimer of a power of
16 appointment or other power not held by a fiduciary, a
17 disclaimer by an appointee, object, or taker in default of an
18 exercise of a power of appointment, and a disclaimer by a
19 fiduciary.

20 The bill further specifies certain rules related to the
21 delivery or filing of a disclaimer, depending on the manner in
22 which the disclaimer was created, and specifies certain
23 circumstances under which a disclaimer is barred or limited.

24 The bill further provides that a disclaimer under the
25 provisions of the bill constitutes a transfer of assets for
26 the purpose of determining eligibility for medical assistance
27 benefits under Code chapter 249A in an amount equal to the
28 value of the property, interest, or right disclaimed.

29 The bill specifies certain amendments relating to the trust
30 code. The bill provides that burial, funeral, and perpetual
31 trusts are exempted from the trust code, specifies the
32 circumstances under which a spendthrift trust is created to
33 restrain both voluntary and involuntary transfers of the
34 beneficiary's interest, and circumstances under which such a
35 trust may be available to a creditor, provides for an award of

1 attorney fees and costs in a judicial proceeding involving the
2 administration of a trust, and provides that in the absence of
3 contrary evidence, discretionary language granting a trustee
4 discretion to make or withhold a distribution shall prevail
5 over any language indicating that the beneficiary may have a
6 legally enforceable right to distributions or indicating a
7 standard for payments or distributions.

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**Fiscal Services Division
Legislative Services Agency
Fiscal Note**

SF 2167 - Probate and Trust Law (LSB 5147 SV)

Analyst: Jennifer Acton (Phone: (515) 281-7846) (jennifer.acton@legis.state.ia.us)

Fiscal Note Version - New

Description

Senate File 2167 relates to the Iowa Probate Code, including provisions relating to estate recovery of medical assistance benefits, the power to disclaim property interests, and trusts.

Assumptions

1. Senate File 2167 allows the Estate Recovery Program in the Department of Human Services to collect funds that belong to the State when an affidavit to claim funds has not been presented by the deceased person's representative within 90 days of the deceased person's death rather than have the funds remain unclaimed or to be remitted to the State Treasurer of Iowa. Medical Assistance Recovery would only apply to people who were on Medicaid.
2. Under current law, there is no tool available for the Estate Recovery Program to file an affidavit to receive abandoned funds from bank accounts, insurance proceeds, or other resources already intended in Section 633.356(1), Code of Iowa, which could be used to repay the medical assistance debt.
3. The average recovery on each estate is approximately \$1,500. The average number of estate recovery cases per year is approximately 133.
4. The amount of revenue received for the reimbursement of Medical Assistance is estimated to be approximately \$200,000. The State match rate is 36.36% resulting in the amount of revenue the State would received being \$72,500. The remainder goes to the federal government for their portion of medical assistance.
5. The cost of collection fees is approximately 7.5% or \$15,000 would be paid as collection fees at a 50.0% State match rate or \$7,500.
6. Under the Iowa Uniform Disclaimer of Property Interest Act, which replaces current Section 663.704, Code of Iowa, a daughter-in-law or son-in-law who is a beneficiary under a will could disclaim their inheritance to a son or daughter. Since lineal decedents are exempt from the Iowa Inheritance Tax, no tax would be owed after the disclaimer. Due to insufficient information, no impact can be determined on this section of the Bill.

Fiscal Impact

Senate File 2167 increases the annual revenue received by the Department of Human Services for Medical Assistance Recovery by approximately \$65,000.

Sources

Department of Human Services
State Treasurer
Department of Revenue

Dennis C Prouty

March 8, 2004

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

SENATE FILE 2167
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3047)

(AS AMENDED AND PASSED BY THE SENATE MARCH 9, 2004)

_____ - New Language by the Senate

Passed Senate, Date _____ Passed House, 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 estate recovery of medical assistance benefits,
3 the power to disclaim property interests, and trusts.

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

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S.F. 2167

1 Section 1. Section 249A.3, subsection 11, paragraph c,
2 Code Supplement 2003, is amended to read as follows:

3 c. A disclaimer of any property, interest, or right
4 pursuant to section ~~633.704~~ 633.704E constitutes a transfer of
5 assets for the purpose of determining eligibility for medical
6 assistance in an amount equal to the value of the property,
7 interest, or right disclaimed.

8 Sec. 2. Section 633.356, subsection 1, unnumbered
9 paragraph 1, Code 2003, is amended to read as follows:

10 When the gross value of the decedent's personal property
11 does not exceed twenty-five thousand dollars and there is no
12 real property or the real property passes to persons exempt
13 from inheritance tax pursuant to section 450.9 as joint
14 tenants with right of survivorship, and if forty days have
15 elapsed since the death of the decedent, the successor of the
16 decedent as defined in subsection 2 may, by filing an
17 affidavit prepared pursuant to subsection 3 or 8, and without
18 procuring letters of appointment, do any of the following with
19 respect to one or more particular items of personal property:

20 Sec. 3. Section 633.356, subsection 3, paragraph a, Code
21 2003, is amended to read as follows:

22 a. The decedent's name, social security number, and the
23 date and place of the decedent's death.

24 Sec. 4. Section 633.356, subsection 4, unnumbered
25 paragraph 3, Code 2003, is amended to read as follows:

26 Judgments rendered by any court in this state and mortgages
27 belonging to a decedent whose personal property is being
28 distributed pursuant to this section may, without prior order
29 of court, be released, discharged, or assigned, in whole or in
30 part, as to any particular property, and deeds may be executed
31 in performance of real estate contracts entered into by the
32 decedent, where an affidavit made pursuant to subsection 3 or
33 8 is filed in the office of the county recorder of the county
34 wherein any judgment, mortgage, or real estate contract
35 appears of record.

1 Sec. 5. Section 633.356, subsection 7, unnumbered
2 paragraph 1, Code 2003, is amended to read as follows:

3 If the requirements of this section are satisfied, receipt
4 by the holder of the decedent's property of the affidavit
5 under subsection 3 or 8 constitutes sufficient acquittance for
6 the payment of money, delivery of property, or transferring
7 the registered ownership of property pursuant to this chapter
8 and discharges the holder from any further liability with
9 respect to the money or property. The holder may rely in good
10 faith on the statements in the affidavit and has no duty to
11 inquire into the truth of any statement in the affidavit.

12 Sec. 6. Section 633.356, subsection 8, Code 2003, is
13 amended to read as follows:

14 8. a. When a deceased distributee is entitled to money or
15 property claimed in an affidavit presented under this section
16 with respect to a deceased person whose estate is being
17 administered in this state, the personal representative of the
18 person whose estate is being administered shall present the
19 affidavit to the court in which the estate is being
20 administered. The court shall direct the personal
21 representative to pay the money or deliver the property to the
22 person identified by the affidavit as the successor of the
23 deceased distributee to the extent that the court determines
24 that the deceased distributee was entitled to the money or
25 property under the will or the laws of intestate succession.

26 b. When the department of human services is entitled to
27 money or property of a decedent pursuant to section 249A.5,
28 subsection 2, and no affidavit has been presented by a
29 successor of the decedent as defined in subsection 2, within
30 ninety days of the date of the decedent's death, the funds in
31 the account, up to the amount of the claim of the department,
32 shall be paid to the department upon presentation by the
33 department or an entity designated by the department of an
34 affidavit to the holder of the decedent's property. Such
35 affidavit shall include the information specified in

1 subsection 3, except that the department may submit proof of
2 payment of funeral expenses as verification of the decedent's
3 death instead of a certified copy of the decedent's death
4 certificate. The amount of the department's claim shall also
5 be included in the affidavit, which shall entitle the
6 department to receive the funds as a successor of the
7 decedent. The department shall issue a refund within sixty
8 days to any claimant with a superior priority pursuant to
9 section 633.425, if notice of such claim is given to the
10 department, or to the entity designated by the department to
11 receive notice, within one year of the department's receipt of
12 funds.

13 Sec. 7. Section 633.647, subsection 7, Code 2003, is
14 amended to read as follows:

15 7. To exercise the right to disclaim on behalf of the ward
16 as provided in section ~~633-704~~ 633.704E.

17 Sec. 8. NEW SECTION. 633.704A SHORT TITLE.

18 This division shall be known and may be cited as the "Iowa
19 Uniform Disclaimer of Property Interest Act".

20 Sec. 9. NEW SECTION. 633.704B DEFINITIONS.

21 For purposes of this division, the following definitions
22 shall apply:

23 1. "Disclaimant" means the person to whom a disclaimed
24 interest or power would have passed had the disclaimer not
25 been made.

26 2. "Disclaimed interest" means the interest the
27 disclaimant refuses to accept that would have passed to the
28 disclaimant had the disclaimer not been made.

29 3. "Disclaimer" means the refusal to accept an interest in
30 or power over property.

31 4. "Fiduciary" means a personal representative, trustee,
32 agent acting under a power of attorney, or other person
33 authorized to act as a fiduciary with respect to the property
34 of another person.

35 5. "Jointly held property" means property held in the name

1 of two or more persons under an arrangement in which all
2 holders have concurrent interests and under which the last
3 surviving holder is entitled to the whole of the property.

4 6. "Person" means an individual; corporation; business
5 trust; estate; trust; partnership; limited liability company;
6 association; joint venture; government; governmental
7 subdivision, agency, or instrumentality; public corporation;
8 or any other legal or commercial entity.

9 7. "State" means a state of the United States, the
10 District of Columbia, the Commonwealth of Puerto Rico, the
11 United States Virgin Islands, or any territory or insular
12 possession subject to the jurisdiction of the United States.
13 The term includes any Indian tribe or band, or Alaskan
14 village, recognized by federal law or formally acknowledged by
15 a state.

16 8. "Trust" means any of the following:

17 a. An express trust, charitable or noncharitable, with
18 additions thereto, whenever and however created.

19 b. A trust created pursuant to a statute, judgment, or
20 decree which requires the trust to be administered in the
21 manner of an express trust.

22 Sec. 10. NEW SECTION. 633.704C SCOPE.

23 This division applies to disclaimers of any interest in or
24 power over property, whenever and however created.

25 Sec. 11. NEW SECTION. 633.704D TAX QUALIFIED DISCLAIMER.

26 Notwithstanding any other provision of this division, any
27 disclaimer or transfer that meets the requirements of section
28 2518 of the Internal Revenue Code, as now or hereafter
29 amended, or any successor statute thereto, and the regulations
30 promulgated thereunder, for the purpose of being a tax
31 qualified disclaimer with the effect that the disclaimed or
32 transferred interest is treated as never having been
33 transferred to the disclaimant is effective as a disclaimer
34 under this division.

35 Sec. 12. NEW SECTION. 633.704E POWER TO DISCLAIM --

1 GENERAL REQUIREMENTS -- WHEN IRREVOCABLE.

2 1. A person may disclaim, in whole or in part, any
3 interest in or power over property, including a power of
4 appointment, whenever and however acquired. A person may
5 disclaim the interest or power even if its creator imposed a
6 spendthrift provision or similar restriction on transfer or a
7 restriction or limitation on the right to disclaim.

8 2. Except to the extent a fiduciary's right to disclaim is
9 expressly restricted or limited by another statute of this
10 state or by the instrument creating the fiduciary
11 relationship, or a disclaimer by a fiduciary would be a breach
12 of trust, a fiduciary may disclaim, in whole or in part, any
13 interest in or power over property, including a power of
14 appointment, whether acting in a personal or representative
15 capacity. A fiduciary may disclaim the interest or power even
16 if the creator imposed a spendthrift provision or similar
17 restriction on transfer or a restriction or limitation on the
18 right to disclaim, or an instrument other than the instrument
19 that created the fiduciary relationship imposed a restriction
20 or limitation on the right to disclaim.

21 3. To be effective, a disclaimer must be in writing or
22 other record, declare the disclaimer, describe the interest or
23 power disclaimed, be signed by the person making the
24 disclaimer, and be delivered or filed in the manner provided
25 in section 633.704L. In this subsection, "record" means
26 information that is inscribed on a tangible medium or that is
27 stored in an electronic or other medium and is retrievable in
28 perceivable form.

29 4. A partial disclaimer may be expressed as a fraction,
30 percentage, monetary amount, term of years, limitation of a
31 power, or any other interest or estate in the property.

32 5. A disclaimer becomes irrevocable when it is delivered
33 or filed pursuant to section 633.704L or when it becomes
34 effective as provided in sections 633.704F through 633.704K,
35 whichever occurs later.

1 6. A disclaimer made under this division is not a
2 transfer, assignment, or release.

3 Sec. 13. NEW SECTION. 633.704F EFFECT OF DISCLAIMER OF
4 INTEREST IN PROPERTY.

5 1. As used in this section:

6 a. "Future interest" means an interest that takes effect
7 in possession or enjoyment, if at all, later than the time of
8 its creation.

9 b. "Time of distribution" means the time when a disclaimed
10 interest would have taken effect in possession or enjoyment.

11 2. Except for a disclaimer governed by section 633.704G or
12 633.704H, the following rules apply to a disclaimer of an
13 interest in property:

14 a. The disclaimer takes effect as of the time the
15 instrument creating the interest becomes irrevocable, or, if
16 the interest arose under the law of intestate succession, as
17 of the time of the intestate's death.

18 b. The disclaimed interest passes according to any
19 provision in the instrument creating the interest providing
20 for the disposition of the interest, should it be disclaimed,
21 or of disclaimed interests in general.

22 c. If the instrument does not contain a provision
23 described in paragraph "b", the following rules shall apply:

24 (1) If the disclaimant is an individual, the disclaimed
25 interest passes as if the disclaimant had died immediately
26 before the time of distribution.

27 (2) If the disclaimant is not an individual, the
28 disclaimed interest passes as if the disclaimant did not
29 exist.

30 d. Upon the disclaimer of a preceding interest, a future
31 interest held by a person other than the disclaimant takes
32 effect as if the disclaimant had died or ceased to exist
33 immediately before the time of distribution, but a future
34 interest held by the disclaimant of the preceding interest is
35 not accelerated in possession or enjoyment.

1 e. For purposes of this section, if an individual
2 disclaims a future interest not held in trust, the disclaimed
3 future interest passes as if that interest had been held in
4 trust.

5 Sec. 14. NEW SECTION. 633.704G DISCLAIMER OF RIGHTS OF
6 SURVIVORSHIP IN JOINTLY HELD PROPERTY.

7 1. Upon the death of a holder of jointly held property, a
8 surviving holder may disclaim, in whole or part, the greater
9 of the following:

10 a. A fractional share of the property determined by
11 dividing the number one by the number of joint holders alive
12 immediately before the death of the holder to whose death the
13 disclaimer relates.

14 b. All of the property, except that part of the value of
15 the entire interest attributable to the contribution furnished
16 by the disclaimant.

17 2. A disclaimer under subsection 1 takes effect as of the
18 death of the holder of jointly held property to whose death
19 the disclaimer relates.

20 3. An interest in jointly held property disclaimed by a
21 surviving holder of the property passes as if the disclaimant
22 predeceased the holder to whose death the disclaimer relates.

23 Sec. 15. NEW SECTION. 633.704H DISCLAIMER OF INTEREST BY
24 TRUSTEE.

25 If a trustee disclaims an interest in property that
26 otherwise would have become trust property, the interest does
27 not become trust property.

28 Sec. 16. NEW SECTION. 633.704I DISCLAIMER OF POWER OF
29 APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY.

30 If a holder disclaims a power of appointment or other power
31 not held in a fiduciary capacity, the following rules shall
32 apply:

33 1. If the holder has not exercised the power, the
34 disclaimer takes effect as of the time the instrument creating
35 the power becomes irrevocable.

1 2. If the holder has exercised the power and the
2 disclaimer is of a power other than a presently exercisable
3 general power of appointment, the disclaimer takes effect
4 immediately after the last exercise of the power.

5 3. The instrument creating the power is construed as if
6 the power expired when the disclaimer became effective.

7 Sec. 17. NEW SECTION. 633.704J DISCLAIMER BY APPOINTEE,
8 OBJECT, OR TAKER IN DEFAULT OF EXERCISE OF POWER OF
9 APPOINTMENT.

10 1. For purposes of this section, all of the following
11 rules shall apply:

12 a. An appointee is a person to whom a holder of a power
13 has effectively appointed the property subject to the power.

14 b. An object of a power is a person to whom a holder of a
15 power may appoint the property subject to the power sometime
16 in the future.

17 c. A taker in default of the exercise of a power of
18 appointment is a person designated by the person creating the
19 power in the holder to take the property subject to the power
20 if the power has not been effectively exercised.

21 2. A disclaimer of an interest in property by an appointee
22 of a power of appointment takes effect as of the time the
23 instrument by which the holder exercises the power becomes
24 irrevocable.

25 3. A disclaimer of an interest in property by an object or
26 taker in default of an exercise of a power of appointment
27 takes effect as of the time the instrument creating the power
28 becomes irrevocable.

29 Sec. 18. NEW SECTION. 633.704K DISCLAIMER OF POWER HELD
30 IN FIDUCIARY CAPACITY.

31 1. If a fiduciary disclaims a power held in a fiduciary
32 capacity which has not been exercised, the disclaimer takes
33 effect as of the time the instrument creating the power
34 becomes irrevocable.

35 2. If a fiduciary disclaims a power held in a fiduciary

1 capacity which has been exercised, the disclaimer takes effect
2 immediately after the last exercise of the power.

3 3. A disclaimer under this section is effective as to
4 another fiduciary if the disclaimer so provides and the
5 fiduciary disclaiming has the authority to bind the estate,
6 trust, or other person for whom the fiduciary is acting.

7 Sec. 19. NEW SECTION. 633.704L DELIVERY OR FILING.

8 1. For the purposes of this section, "beneficiary
9 designation" means an instrument, other than an instrument
10 creating a trust, naming the beneficiary of any of the
11 following:

- 12 a. An annuity or insurance policy.
- 13 b. An account with a designation for payment on death.
- 14 c. A security registered in beneficiary form.
- 15 d. A pension, profit-sharing, retirement, or other
16 employment-related benefit plan.
- 17 e. Any other nonprobate transfer at death.

18 2. Subject to subsections 3 through 12, delivery of a
19 disclaimer may be effected by personal delivery, first-class
20 mail, or any other method likely to result in its receipt.

21 3. In the case of an interest created under the law of
22 intestate succession or an interest created by will, other
23 than an interest in a testamentary trust, the following shall
24 apply:

- 25 a. A disclaimer must be delivered to the personal
26 representative of the decedent's estate.
- 27 b. If no personal representative is then serving, a
28 disclaimer must be filed with a court having jurisdiction to
29 appoint the personal representative.

30 4. In the case of an interest in a testamentary trust, one
31 of the following shall apply:

- 32 a. A disclaimer must be delivered to the trustee then
33 serving, or if no trustee is then serving, to the personal
34 representative of the decedent's estate.
- 35 b. If no personal representative is then serving, a

1 disclaimer shall be filed with a court having jurisdiction to
2 enforce the trust.

3 5. In the case of an interest in an inter vivos trust, one
4 of the following shall apply:

5 a. A disclaimer must be delivered to the trustee then
6 serving.

7 b. If no trustee is then serving, a disclaimer must be
8 filed with a court having jurisdiction to enforce the trust.

9 c. If a disclaimer is made before the time the instrument
10 creating the trust becomes irrevocable, the disclaimer must be
11 delivered to the settlor of a revocable trust or the
12 transferor of the interest.

13 6. In the case of a disclaimer of an interest created by a
14 beneficiary designation made before the time the designation
15 becomes irrevocable, the disclaimer must be delivered to the
16 person making the beneficiary designation.

17 7. In the case of a disclaimer of an interest created by a
18 beneficiary designation made after the time the designation
19 becomes irrevocable, the disclaimer must be delivered to the
20 person obligated to distribute the interest.

21 8. In the case of a disclaimer by a surviving holder of
22 jointly held property, the disclaimer must be delivered to the
23 person to whom the disclaimed interest passes.

24 9. In the case of a disclaimer by an object or taker in
25 default of an exercise of a power of appointment at any time
26 after the power was created, one of the following shall apply:

27 a. The disclaimer must be delivered to the holder of the
28 power or to the fiduciary acting under the instrument that
29 created the power.

30 b. If no fiduciary is then serving, the disclaimer must be
31 filed with a court having authority to appoint the fiduciary.

32 10. In the case of a disclaimer by an appointee of a
33 nonfiduciary power of appointment, one of the following shall
34 apply:

35 a. The disclaimer must be delivered to the holder, the

1 personal representative of the holder's estate, or to the
2 fiduciary under the instrument that created the power.

3 b. If no fiduciary is then serving, the disclaimer must be
4 filed with a court having authority to appoint the fiduciary.

5 11. In the case of a disclaimer by a fiduciary of a power
6 over a trust or estate, the disclaimer must be delivered as
7 provided in subsection 3, 4, or 5, as if the power disclaimed
8 were an interest in property.

9 12. In the case of a disclaimer of a power by an agent,
10 the disclaimer must be delivered to the principal or the
11 principal's representative.

12 13. In addition to the foregoing, all of the following
13 shall apply:

14 a. A copy of any instrument of disclaimer affecting real
15 estate shall be filed in the office of the county recorder of
16 the county where the real estate is located. Failure to file,
17 record, or register the disclaimer does not affect its
18 validity as between the disclaimant and persons to whom the
19 property interest or power passes by reason of the disclaimer.

20 b. A copy of an instrument of disclaimer, regardless of
21 its subject, may be filed with the clerk of court of the
22 county in which proceedings for administration have been
23 commenced, if applicable.

24 Sec. 20. NEW SECTION. 633.704M WHEN DISCLAIMER BARRED OR
25 LIMITED.

26 1. A disclaimer is barred by a written waiver of the right
27 to disclaim.

28 2. A disclaimer of an interest in property is barred if
29 any of the following events occur before the disclaimer
30 becomes effective:

31 a. The disclaimant accepts the interest sought to be
32 disclaimed.

33 b. The disclaimant voluntarily assigns, conveys,
34 encumbers, pledges, or transfers the interest sought to be
35 disclaimed or contracts to do so.

1 c. A judicial sale of the interest sought to be disclaimed
2 occurs.

3 3. A disclaimer, in whole or part, of the future exercise
4 of a power held in a fiduciary capacity is not barred by its
5 previous exercise.

6 4. A disclaimer, in whole or part, of the future exercise
7 of a power not held in a fiduciary capacity is not barred by
8 its previous exercise unless the power is exercisable in favor
9 of the disclaimant.

10 5. A disclaimer is barred or limited if so provided by law
11 other than this division.

12 6. A disclaimer of a power over property which is barred
13 by this section is ineffective. A disclaimer of an interest
14 in property which is barred by this section takes effect as a
15 transfer of the interest disclaimed to the persons who would
16 have taken the interest under this division had the disclaimer
17 not been barred.

18 Sec. 21. NEW SECTION. 633.704N DIVISION SUPPLEMENTED BY
19 OTHER LAW.

20 1. Unless displaced by a provision of this division, the
21 principles of law and equity supplement this division.

22 2. This division does not limit any right of a person to
23 waive, release, disclaim, or renounce an interest in or power
24 over property under a law other than this division.

25 Sec. 22. NEW SECTION. 633.704O MEDICAL ASSISTANCE
26 ELIGIBILITY.

27 A disclaimer of any property, interest, or right pursuant
28 to the provisions of this division constitutes a transfer of
29 assets for the purpose of determining eligibility for medical
30 assistance under chapter 249A in an amount equal to the value
31 of the property, interest, or right disclaimed.

32 Sec. 23. NEW SECTION. 633.704P APPLICATION TO EXISTING
33 RELATIONSHIP.

34 Except as otherwise provided in section 633.704M, an
35 interest in or power over property existing on the effective

1 date of this Act as to which the time for delivering or filing
2 a disclaimer under law superseded by this division has not
3 expired may be disclaimed after the effective date of this
4 Act.

5 Sec. 24. NEW SECTION. 633.704Q SEVERABILITY.

6 If any provision of this division or the application
7 thereof to any person or circumstance is held invalid, the
8 invalidity shall not affect other provisions or application of
9 the division which can be given effect without the invalid
10 provisions or application, and to this end, the provisions of
11 the division are severable.

12 Sec. 25. Section 633.1102, subsection 17, Code Supplement
13 2003, is amended by adding the following new paragraph:

14 NEW PARAGRAPH. m. Burial, funeral, and perpetual care
15 trusts.

16 Sec. 26. Section 633.1105, Code Supplement 2003, is
17 amended to read as follows:

18 633.1105 TRUST PROVISIONS CONTROL.

19 The provisions terms of a trust shall always control and
20 take precedence over any section of this trust code to the
21 contrary. If a provision term of the trust instrument
22 modifies or makes any section of this trust code inapplicable
23 to a the trust, the common law shall apply to any issues
24 raised by such provision term.

25 Sec. 27. Section 633.2301, Code 2003, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 633.2301 SPENDTHRIFT PROTECTION RECOGNIZED.

29 Except as otherwise provided in section 633.2302, all of
30 the following provisions shall apply:

31 1. A term of a trust providing that the interest of a
32 beneficiary is held subject to a "spendthrift trust", or words
33 of similar import, is sufficient to restrain both voluntary
34 and involuntary transfers of the beneficiary's interest.

35 2. a. A creditor or assignee of a beneficiary may reach a

1 mandatory distribution of income or principal, including a
2 distribution upon termination of the trust, if the trustee has
3 not made the distribution to the beneficiary within a
4 reasonable time after the required distribution date.

5 b. For the purposes of this subsection, "mandatory
6 distribution" means a distribution required by the express
7 terms of the trust of any of the following:

8 (1) All of the income, net income, or principal of the
9 trust.

10 (2) A fraction or percentage of the income or principal of
11 the trust.

12 (3) A specific dollar amount from the trust.

13 c. A distribution that is subject to a condition shall not
14 be considered a mandatory distribution.

15 3. If a creditor or assignee of a beneficiary is permitted
16 to reach a mandatory distribution under this section, the sole
17 remedy of the creditor or assignee shall be to apply to the
18 court having jurisdiction of the trust after such reasonable
19 period of time has expired for a judgment ordering the trustee
20 to pay to the creditor or the assignee a sum of money equal to
21 the lesser of the amount of the debt or assignment, or the
22 amount of the mandatory distribution described in subsection
23 2. No other remedy, including but not limited to, attachment
24 or garnishment of any interest in the trust, recovery of court
25 costs or attorney fees, or placing a lien of any type on any
26 trust property or on the interest of any beneficiary in the
27 trust, shall be permitted or ordered by any court. Any
28 writing signed by the beneficiary allowing any remedy other
29 than payment of the mandatory distribution not made to the
30 beneficiary within a reasonable time after the required
31 distribution date shall be void and shall not be enforced by
32 any court.

33 4. A creditor or assignee of a beneficiary of a
34 spendthrift trust shall not compel a distribution that is
35 subject to the trustee's discretion if any of the following

1 apply:

2 a. The distribution is expressed in the form of a standard
3 of distribution.

4 b. The trustee has abused its discretion.

5 Sec. 28. Section 633.2302, Code 2003, is amended to read
6 as follows:

7 633.2302 EXCEPTIONS TO SPENDTHRIFT PROTECTION.

8 A term of a trust prohibiting an involuntary transfer of a
9 beneficiary's interest shall be invalid as against claims by
10 any ~~of the following:~~

11 ~~1.--Any creditor of the beneficiary if the beneficiary is~~
12 ~~the settlor.~~

13 ~~2.--Any creditor of the beneficiary as to a distribution to~~
14 ~~be made upon an event terminating or partially terminating the~~
15 ~~trust.~~

16 Sec. 29. NEW SECTION. 633.4507 ATTORNEY FEES AND COSTS.

17 In a judicial proceeding involving the administration of a
18 trust, the court, as justice and equity may require, may award
19 costs and expenses, including reasonable attorney fees, to any
20 party, to be paid by another party or from the trust that is
21 the subject of the controversy.

22 Sec. 30. NEW SECTION. 633.4702 DISCRETIONARY LANGUAGE
23 PREVAILS OVER OTHER STANDARD.

24 In the absence of clear and convincing evidence to the
25 contrary, language in a governing instrument granting a
26 trustee discretion to make or withhold a distribution shall
27 prevail over any language in the governing instrument
28 indicating that the beneficiary may have a legally enforceable
29 right to distributions or indicating a standard for payments
30 or distributions.

31 Sec. 31. Section 633.704, Code 2003, is repealed.

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Holveck
Boettger
Tinsman

Succeeded By SSB#3047
(SF) HF 2167

SENATE FILE Judiciary
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON REDFERN)

Passed Senate, Date _____ Passed House, 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 estate recovery of medical assistance benefits,
3 the power to disclaim property interests, and trusts.

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

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1 Section 1. Section 249A.3, subsection 11, paragraph c,
2 Code Supplement 2003, is amended to read as follows:

3 c. A disclaimer of any property, interest, or right
4 pursuant to section ~~633.704~~ 633.704E constitutes a transfer of
5 assets for the purpose of determining eligibility for medical
6 assistance in an amount equal to the value of the property,
7 interest, or right disclaimed.

8 Sec. 2. Section 633.356, subsection 1, unnumbered
9 paragraph 1, Code 2003, is amended to read as follows:

10 When the gross value of the decedent's personal property
11 does not exceed twenty-five thousand dollars and there is no
12 real property or the real property passes to persons exempt
13 from inheritance tax pursuant to section 450.9 as joint
14 tenants with right of survivorship, and if forty days have
15 elapsed since the death of the decedent, the successor of the
16 decedent as defined in subsection 2 may, by filing an
17 affidavit prepared pursuant to subsection 3 or 8, and without
18 procuring letters of appointment, do any of the following with
19 respect to one or more particular items of personal property:

20 Sec. 3. Section 633.356, subsection 3, paragraph a, Code
21 2003, is amended to read as follows:

22 a. The decedent's name, social security number, and the
23 date and place of the decedent's death.

24 Sec. 4. Section 633.356, subsection 4, unnumbered
25 paragraph 3, Code 2003, is amended to read as follows:

26 Judgments rendered by any court in this state and mortgages
27 belonging to a decedent whose personal property is being
28 distributed pursuant to this section may, without prior order
29 of court, be released, discharged, or assigned, in whole or in
30 part, as to any particular property, and deeds may be executed
31 in performance of real estate contracts entered into by the
32 decedent, where an affidavit made pursuant to subsection 3 or
33 8 is filed in the office of the county recorder of the county
34 wherein any judgment, mortgage, or real estate contract
35 appears of record.

1 Sec. 5. Section 633.356, subsection 7, unnumbered
2 paragraph 1, Code 2003, is amended to read as follows:

3 If the requirements of this section are satisfied, receipt
4 by the holder of the decedent's property of the affidavit
5 under subsection 3 or 8 constitutes sufficient acquittance for
6 the payment of money, delivery of property, or transferring
7 the registered ownership of property pursuant to this chapter
8 and discharges the holder from any further liability with
9 respect to the money or property. The holder may rely in good
10 faith on the statements in the affidavit and has no duty to
11 inquire into the truth of any statement in the affidavit.

12 Sec. 6. Section 633.356, subsection 8, Code 2003, is
13 amended to read as follows:

14 8. a. When a deceased distributee is entitled to money or
15 property claimed in an affidavit presented under this section
16 with respect to a deceased person whose estate is being
17 administered in this state, the personal representative of the
18 person whose estate is being administered shall present the
19 affidavit to the court in which the estate is being
20 administered. The court shall direct the personal
21 representative to pay the money or deliver the property to the
22 person identified by the affidavit as the successor of the
23 deceased distributee to the extent that the court determines
24 that the deceased distributee was entitled to the money or
25 property under the will or the laws of intestate succession.

26 b. When the department of human services is entitled to
27 money or property of a decedent pursuant to section 249A.5,
28 subsection 2, and no affidavit has been presented by a
29 successor of the decedent as defined in subsection 2, within
30 ninety days of the date of the decedent's death, the funds in
31 the account, up to the amount of the claim of the department,
32 shall be paid to the department upon presentation by the
33 department or an entity designated by the department of an
34 affidavit to the holder of the decedent's property. Such
35 affidavit shall include the information specified in

1 subsection 3, except that the department may submit proof of
2 payment of funeral expenses as verification of the decedent's
3 death instead of a certified copy of the decedent's death
4 certificate. The amount of the department's claim shall also
5 be included in the affidavit, which shall entitle the
6 department to receive the funds as a successor of the
7 decedent. The department shall issue a refund within sixty
8 days to any claimant with a superior priority pursuant to
9 section 633.425, if notice of such claim is given to the
10 department, or to the entity designated by the department to
11 receive notice, within one year of the department's receipt of
12 funds.

13 Sec. 7. Section 633.647, subsection 7, Code 2003, is
14 amended to read as follows:

15 7. To exercise the right to disclaim on behalf of the ward
16 as provided in section ~~633-704~~ 633.704E.

17 Sec. 8. NEW SECTION. 633.704A SHORT TITLE.

18 This division shall be known and may be cited as the "Iowa
19 Uniform Disclaimer of Property Interest Act".

20 Sec. 9. NEW SECTION. 633.704B DEFINITIONS.

21 For purposes of this division, the following definitions
22 shall apply:

23 1. "Disclaimant" means the person to whom a disclaimed
24 interest or power would have passed had the disclaimer not
25 been made.

26 2. "Disclaimed interest" means the interest the
27 disclaimant refuses to accept that would have passed to the
28 disclaimant had the disclaimer not been made.

29 3. "Disclaimer" means the refusal to accept an interest in
30 or power over property.

31 4. "Fiduciary" means a personal representative, trustee,
32 agent acting under a power of attorney, or other person
33 authorized to act as a fiduciary with respect to the property
34 of another person.

35 5. "Jointly held property" means property held in the name

1 of two or more persons under an arrangement in which all
2 holders have concurrent interests and under which the last
3 surviving holder is entitled to the whole of the property.

4 6. "Person" means an individual; corporation; business
5 trust; estate; trust; partnership; limited liability company;
6 association; joint venture; government; governmental
7 subdivision, agency, or instrumentality; public corporation;
8 or any other legal or commercial entity.

9 7. "State" means a state of the United States, the
10 District of Columbia, the Commonwealth of Puerto Rico, the
11 United States Virgin Islands, or any territory or insular
12 possession subject to the jurisdiction of the United States.
13 The term includes any Indian tribe or band, or Alaskan
14 village, recognized by federal law or formally acknowledged by
15 a state.

16 8. "Trust" means any of the following:

17 a. An express trust, charitable or noncharitable, with
18 additions thereto, whenever and however created.

19 b. A trust created pursuant to a statute, judgment, or
20 decree which requires the trust to be administered in the
21 manner of an express trust.

22 Sec. 10. NEW SECTION. 633.704C SCOPE.

23 This division applies to disclaimers of any interest in or
24 power over property, whenever and however created.

25 Sec. 11. NEW SECTION. 633.704D TAX QUALIFIED DISCLAIMER.

26 Notwithstanding any other provision of this division, any
27 disclaimer or transfer that meets the requirements of section
28 2518 of the Internal Revenue Code, as now or hereafter
29 amended, or any successor statute thereto, and the regulations
30 promulgated thereunder, for the purpose of being a tax
31 qualified disclaimer with the effect that the disclaimed or
32 transferred interest is treated as never having been
33 transferred to the disclaimant is effective as a disclaimer
34 under this division.

35 Sec. 12. NEW SECTION. 633.704E POWER TO DISCLAIM --

1 GENERAL REQUIREMENTS -- WHEN IRREVOCABLE.

2 1. A person may disclaim, in whole or in part, any
3 interest in or power over property, including a power of
4 appointment, whenever and however acquired. A person may
5 disclaim the interest or power even if its creator imposed a
6 spendthrift provision or similar restriction on transfer or a
7 restriction or limitation on the right to disclaim.

8 2. Except to the extent a fiduciary's right to disclaim is
9 expressly restricted or limited by another statute of this
10 state or by the instrument creating the fiduciary
11 relationship, or a disclaimer by a fiduciary would be a breach
12 of trust, a fiduciary may disclaim, in whole or in part, any
13 interest in or power over property, including a power of
14 appointment, whether acting in a personal or representative
15 capacity. A fiduciary may disclaim the interest or power even
16 if the creator imposed a spendthrift provision or similar
17 restriction on transfer or a restriction or limitation on the
18 right to disclaim, or an instrument other than the instrument
19 that created the fiduciary relationship imposed a restriction
20 or limitation on the right to disclaim.

21 3. To be effective, a disclaimer must be in writing or
22 other record, declare the disclaimer, describe the interest or
23 power disclaimed, be signed by the person making the
24 disclaimer, and be delivered or filed in the manner provided
25 in section 633.704L. In this subsection, "record" means
26 information that is inscribed on a tangible medium or that is
27 stored in an electronic or other medium and is retrievable in
28 perceivable form.

29 4. A partial disclaimer may be expressed as a fraction,
30 percentage, monetary amount, term of years, limitation of a
31 power, or any other interest or estate in the property.

32 5. A disclaimer becomes irrevocable when it is delivered
33 or filed pursuant to section 633.704L or when it becomes
34 effective as provided in sections 633.704F through 633.704K,
35 whichever occurs later.

1 6. A disclaimer made under this division is not a
2 transfer, assignment, or release.

3 Sec. 13. NEW SECTION. 633.704F EFFECT OF DISCLAIMER OF
4 INTEREST IN PROPERTY.

5 1. As used in this section:

6 a. "Future interest" means an interest that takes effect
7 in possession or enjoyment, if at all, later than the time of
8 its creation.

9 b. "Time of distribution" means the time when a disclaimed
10 interest would have taken effect in possession or enjoyment.

11 2. Except for a disclaimer governed by section 633.704G or
12 633.704H, the following rules apply to a disclaimer of an
13 interest in property:

14 a. The disclaimer takes effect as of the time the
15 instrument creating the interest becomes irrevocable, or, if
16 the interest arose under the law of intestate succession, as
17 of the time of the intestate's death.

18 b. The disclaimed interest passes according to any
19 provision in the instrument creating the interest providing
20 for the disposition of the interest, should it be disclaimed,
21 or of disclaimed interests in general.

22 c. If the instrument does not contain a provision
23 described in paragraph "b", the following rules shall apply:

24 (1) If the disclaimant is an individual, the disclaimed
25 interest passes as if the disclaimant had died immediately
26 before the time of distribution.

27 (2) If the disclaimant is not an individual, the
28 disclaimed interest passes as if the disclaimant did not
29 exist.

30 d. Upon the disclaimer of a preceding interest, a future
31 interest held by a person other than the disclaimant takes
32 effect as if the disclaimant had died or ceased to exist
33 immediately before the time of distribution, but a future
34 interest held by the disclaimant of the preceding interest is
35 not accelerated in possession or enjoyment.

1 e. For purposes of this section, if an individual
2 disclaims a future interest not held in trust, the disclaimed
3 future interest passes as if that interest had been held in
4 trust.

5 Sec. 14. NEW SECTION. 633.704G DISCLAIMER OF RIGHTS OF
6 SURVIVORSHIP IN JOINTLY HELD PROPERTY.

7 1. Upon the death of a holder of jointly held property, a
8 surviving holder may disclaim, in whole or part, the greater
9 of the following:

10 a. A fractional share of the property determined by
11 dividing the number one by the number of joint holders alive
12 immediately before the death of the holder to whose death the
13 disclaimer relates.

14 b. All of the property, except that part of the value of
15 the entire interest attributable to the contribution furnished
16 by the disclaimant.

17 2. A disclaimer under subsection 1 takes effect as of the
18 death of the holder of jointly held property to whose death
19 the disclaimer relates.

20 3. An interest in jointly held property disclaimed by a
21 surviving holder of the property passes as if the disclaimant
22 predeceased the holder to whose death the disclaimer relates.

23 Sec. 15. NEW SECTION. 633.704H DISCLAIMER OF INTEREST BY
24 TRUSTEE.

25 If a trustee disclaims an interest in property that
26 otherwise would have become trust property, the interest does
27 not become trust property.

28 Sec. 16. NEW SECTION. 633.704I DISCLAIMER OF POWER OF
29 APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY.

30 If a holder disclaims a power of appointment or other power
31 not held in a fiduciary capacity, the following rules shall
32 apply:

33 1. If the holder has not exercised the power, the
34 disclaimer takes effect as of the time the instrument creating
35 the power becomes irrevocable.

1 2. If the holder has exercised the power and the
2 disclaimer is of a power other than a presently exercisable
3 general power of appointment, the disclaimer takes effect
4 immediately after the last exercise of the power.

5 3. The instrument creating the power is construed as if
6 the power expired when the disclaimer became effective.

7 Sec. 17. NEW SECTION. 633.704J DISCLAIMER BY APPOINTEE,
8 OBJECT, OR TAKER IN DEFAULT OF EXERCISE OF POWER OF
9 APPOINTMENT.

10 1. For purposes of this section, all of the following
11 rules shall apply:

12 a. An appointee is a person to whom a holder of a power
13 has effectively appointed the property subject to the power.

14 b. An object of a power is a person to whom a holder of a
15 power may appoint the property subject to the power sometime
16 in the future.

17 c. A taker in default of the exercise of a power of
18 appointment is a person designated by the person creating the
19 power in the holder to take the property subject to the power
20 if the power has not been effectively exercised.

21 2. A disclaimer of an interest in property by an appointee
22 of a power of appointment takes effect as of the time the
23 instrument by which the holder exercises the power becomes
24 irrevocable.

25 3. A disclaimer of an interest in property by an object or
26 taker in default of an exercise of a power of appointment
27 takes effect as of the time the instrument creating the power
28 becomes irrevocable.

29 Sec. 18. NEW SECTION. 633.704K DISCLAIMER OF POWER HELD
30 IN FIDUCIARY CAPACITY.

31 1. If a fiduciary disclaims a power held in a fiduciary
32 capacity which has not been exercised, the disclaimer takes
33 effect as of the time the instrument creating the power
34 becomes irrevocable.

35 2. If a fiduciary disclaims a power held in a fiduciary

1 capacity which has been exercised, the disclaimer takes effect
2 immediately after the last exercise of the power.

3 3. A disclaimer under this section is effective as to
4 another fiduciary if the disclaimer so provides and the
5 fiduciary disclaiming has the authority to bind the estate,
6 trust, or other person for whom the fiduciary is acting.

7 Sec. 19. NEW SECTION. 633.704L DELIVERY OR FILING.

8 1. For the purposes of this section, "beneficiary
9 designation" means an instrument, other than an instrument
10 creating a trust, naming the beneficiary of any of the
11 following:

- 12 a. An annuity or insurance policy.
- 13 b. An account with a designation for payment on death.
- 14 c. A security registered in beneficiary form.
- 15 d. A pension, profit-sharing, retirement, or other
16 employment-related benefit plan.
- 17 e. Any other nonprobate transfer at death.

18 2. Subject to subsections 3 through 12, delivery of a
19 disclaimer may be effected by personal delivery, first-class
20 mail, or any other method likely to result in its receipt.

21 3. In the case of an interest created under the law of
22 intestate succession or an interest created by will, other
23 than an interest in a testamentary trust, the following shall
24 apply:

- 25 a. A disclaimer must be delivered to the personal
26 representative of the decedent's estate.
- 27 b. If no personal representative is then serving, a
28 disclaimer must be filed with a court having jurisdiction to
29 appoint the personal representative.

30 4. In the case of an interest in a testamentary trust, one
31 of the following shall apply:

- 32 a. A disclaimer must be delivered to the trustee then
33 serving, or if no trustee is then serving, to the personal
34 representative of the decedent's estate.
- 35 b. If no personal representative is then serving, a

1 disclaimer shall be filed with a court having jurisdiction to
2 enforce the trust.

3 5. In the case of an interest in an inter vivos trust, one
4 of the following shall apply:

5 a. A disclaimer must be delivered to the trustee then
6 serving.

7 b. If no trustee is then serving, a disclaimer must be
8 filed with a court having jurisdiction to enforce the trust.

9 c. If a disclaimer is made before the time the instrument
10 creating the trust becomes irrevocable, the disclaimer must be
11 delivered to the settlor of a revocable trust or the
12 transferor of the interest.

13 6. In the case of a disclaimer of an interest created by a
14 beneficiary designation made before the time the designation
15 becomes irrevocable, the disclaimer must be delivered to the
16 person making the beneficiary designation.

17 7. In the case of a disclaimer of an interest created by a
18 beneficiary designation made after the time the designation
19 becomes irrevocable, the disclaimer must be delivered to the
20 person obligated to distribute the interest.

21 8. In the case of a disclaimer by a surviving holder of
22 jointly held property, the disclaimer must be delivered to the
23 person to whom the disclaimed interest passes.

24 9. In the case of a disclaimer by an object or taker in
25 default of an exercise of a power of appointment at any time
26 after the power was created, one of the following shall apply:

27 a. The disclaimer must be delivered to the holder of the
28 power or to the fiduciary acting under the instrument that
29 created the power.

30 b. If no fiduciary is then serving, the disclaimer must be
31 filed with a court having authority to appoint the fiduciary.

32 10. In the case of a disclaimer by an appointee of a
33 nonfiduciary power of appointment, one of the following shall
34 apply:

35 a. The disclaimer must be delivered to the holder, the

1 personal representative of the holder's estate, or to the
2 fiduciary under the instrument that created the power.

3 b. If no fiduciary is then serving, the disclaimer must be
4 filed with a court having authority to appoint the fiduciary.

5 11. In the case of a disclaimer by a fiduciary of a power
6 over a trust or estate, the disclaimer must be delivered as
7 provided in subsection 3, 4, or 5, as if the power disclaimed
8 were an interest in property.

9 12. In the case of a disclaimer of a power by an agent,
10 the disclaimer must be delivered to the principal or the
11 principal's representative.

12 13. In addition to the foregoing, all of the following
13 shall apply:

14 a. A copy of any instrument of disclaimer affecting real
15 estate shall be filed in the office of the country recorder of
16 the county where the real estate is located. Failure to file,
17 record, or register the disclaimer does not affect its
18 validity as between the disclaimant and persons to whom the
19 property interest or power passes by reason of the disclaimer.

20 b. A copy of an instrument of disclaimer, regardless of
21 its subject, may be filed with the clerk of court of the
22 county in which proceedings for administration have been
23 commenced, if applicable.

24 Sec. 20. NEW SECTION. 633.704M WHEN DISCLAIMER BARRED OR
25 LIMITED.

26 1. A disclaimer is barred by a written waiver of the right
27 to disclaim.

28 2. A disclaimer of an interest in property is barred if
29 any of the following events occur before the disclaimer
30 becomes effective:

31 a. The disclaimant accepts the interest sought to be
32 disclaimed.

33 b. The disclaimant voluntarily assigns, conveys,
34 encumbers, pledges, or transfers the interest sought to be
35 disclaimed or contracts to do so.

1 c. A judicial sale of the interest sought to be disclaimed
2 occurs.

3 3. A disclaimer, in whole or part, of the future exercise
4 of a power held in a fiduciary capacity is not barred by its
5 previous exercise.

6 4. A disclaimer, in whole or part, of the future exercise
7 of a power not held in a fiduciary capacity is not barred by
8 its previous exercise unless the power is exercisable in favor
9 of the disclaimant.

10 5. A disclaimer is barred or limited if so provided by law
11 other than this division.

12 6. A disclaimer of a power over property which is barred
13 by this section is ineffective. A disclaimer of an interest
14 in property which is barred by this section takes effect as a
15 transfer of the interest disclaimed to the persons who would
16 have taken the interest under this division had the disclaimer
17 not been barred.

18 Sec. 21. NEW SECTION. 633.704N DIVISION SUPPLEMENTED BY
19 OTHER LAW.

20 1. Unless displaced by a provision of this division, the
21 principles of law and equity supplement this division.

22 2. This division does not limit any right of a person to
23 waive, release, disclaim, or renounce an interest in or power
24 over property under a law other than this division.

25 Sec. 22. NEW SECTION. 633.704O MEDICAL ASSISTANCE
26 ELIGIBILITY.

27 A disclaimer of any property, interest, or right pursuant
28 to the provisions of this division constitutes a transfer of
29 assets for the purpose of determining eligibility for medical
30 assistance under chapter 249A in an amount equal to the value
31 of the property, interest, or right disclaimed.

32 Sec. 23. NEW SECTION. 633.704P APPLICATION TO EXISTING
33 RELATIONSHIP.

34 Except as otherwise provided in section 633.704M, an
35 interest in or power over property existing on the effective

1 date of this Act as to which the time for delivering or filing
2 a disclaimer under law superseded by this division has not
3 expired may be disclaimed after the effective date of this
4 Act.

5 Sec. 24. NEW SECTION. 633.704Q SEVERABILITY.

6 If any provision of this division or the application
7 thereof to any person or circumstance is held invalid, the
8 invalidity shall not affect other provisions or application of
9 the division which can be given effect without the invalid
10 provisions or application, and to this end, the provisions of
11 the division are severable.

12 Sec. 25. Section 633.1102, subsection 17, Code Supplement
13 2003, is amended by adding the following new paragraph:

14 NEW PARAGRAPH. m. Burial, funeral, and perpetual care
15 trusts.

16 Sec. 26. Section 633.1105, Code Supplement 2003, is
17 amended to read as follows:

18 633.1105 TRUST PROVISIONS CONTROL.

19 The provisions terms of a trust shall always control and
20 take precedence over any section of this trust code to the
21 contrary. If a provision term of the trust instrument
22 modifies or makes any section of this trust code inapplicable
23 to a the trust, the common law shall apply to any issues
24 raised by such provision term.

25 Sec. 27. Section 633.2301, Code 2003, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 633.2301 SPENDTHRIFT PROTECTION RECOGNIZED.

29 Except as otherwise provided in section 633.2302, all of
30 the following provisions shall apply:

31 1. A term of a trust providing that the interest of a
32 beneficiary is held subject to a "spendthrift trust", or words
33 of similar import, is sufficient to restrain both voluntary
34 and involuntary transfers of the beneficiary's interest.

35 2. a. A creditor or assignee of a beneficiary may reach a

1 mandatory distribution of income or principal, including a
2 distribution upon termination of the trust, if the trustee has
3 not made the distribution to the beneficiary within a
4 reasonable time after the required distribution date.

5 b. For the purposes of this subsection, "mandatory
6 distribution" means a distribution required by the express
7 terms of the trust of any of the following:

8 (1) All of the income, net income, or principal of the
9 trust.

10 (2) A fraction or percentage of the income or principal of
11 the trust.

12 (3) A specific dollar amount from the trust.

13 c. A distribution that is subject to a condition shall not
14 be considered a mandatory distribution.

15 3. If a creditor or assignee of a beneficiary is permitted
16 to reach a mandatory distribution under this section, the sole
17 remedy of the creditor or assignee shall be to apply to the
18 court having jurisdiction of the trust after such reasonable
19 period of time has expired for a judgment ordering the trustee
20 to pay to the creditor or the assignee a sum of money equal to
21 the lesser of the amount of the debt or assignment, or the
22 amount of the mandatory distribution described in subsection
23 2. No other remedy, including but not limited to, attachment
24 or garnishment of any interest in the trust, recovery of court
25 costs or attorney fees, or placing a lien of any type on any
26 trust property or on the interest of any beneficiary in the
27 trust, shall be permitted or ordered by any court. Any
28 writing signed by the beneficiary allowing any remedy other
29 than payment of the mandatory distribution not made to the
30 beneficiary within a reasonable time after the required
31 distribution date shall be void and shall not be enforced by
32 any court.

33 4. A creditor or assignee of a beneficiary of a
34 spendthrift trust shall not compel a distribution that is
35 subject to the trustee's discretion if any of the following

1 apply:

2 a. The distribution is expressed in the form of a standard
3 of distribution.

4 b. The trustee has abused its discretion.

5 Sec. 28. Section 633.2302, Code 2003, is amended to read
6 as follows:

7 633.2302 EXCEPTIONS TO SPENDTHRIFT PROTECTION.

8 A term of a trust prohibiting an involuntary transfer of a
9 beneficiary's interest shall be invalid as against claims by
10 any ~~of the following~~:

11 ~~1.--Any creditor of the beneficiary if the beneficiary is~~
12 ~~the settlor.~~

13 ~~2.--Any creditor of the beneficiary as to a distribution to~~
14 ~~be made upon an event terminating or partially terminating the~~
15 ~~trust.~~

16 Sec. 29. NEW SECTION. 633.4507 ATTORNEY FEES AND COSTS.

17 In a judicial proceeding involving the administration of a
18 trust, the court, as justice and equity may require, may award
19 costs and expenses, including reasonable attorney fees, to any
20 party, to be paid by another party or from the trust that is
21 the subject of the controversy.

22 Sec. 30. NEW SECTION. 633.4702 DISCRETIONARY LANGUAGE
23 PREVAILS OVER OTHER STANDARD.

24 In the absence of clear and convincing evidence to the
25 contrary, language in a governing instrument granting a
26 trustee discretion to make or withhold a distribution shall
27 prevail over any language in the governing instrument
28 indicating that the beneficiary may have a legally enforceable
29 right to distributions or indicating a standard for payments
30 or distributions.

31 Sec. 31. Section 633.704, Code 2003, is repealed.

32 EXPLANATION

33 This bill relates to the Iowa probate code, including
34 provisions relating to estate recovery of medical assistance
35 benefits, the power to disclaim property interests, and

1 trusts.

2 The bill allows the department of human services to obtain
 3 funds in satisfaction of a decedent's medical assistance debts
 4 when no successor affidavit has been presented to the court in
 5 which the decedent's estate is being administered. Current
 6 law provides that the only person entitled to sign an
 7 affidavit to release such funds is a successor of a decedent
 8 who must be a person named in the decedent's will, or an heir
 9 if the decedent died intestate. The bill specifically
 10 authorizes the department to sign an affidavit requesting such
 11 funds up to the amount of the department's claim if no
 12 affidavit has been presented by a successor of the decedent
 13 within 90 days of the date of the decedent's death. The bill
 14 further specifies that the decedent's social security number
 15 must be provided in the affidavit.

16 The bill creates the "Iowa Uniform Disclaimer of Property
 17 Interest Act", which replaces current Code section 633.704
 18 relating to the same subject. The Act applies to disclaimers
 19 of any interest in or power over property, including
 20 disclaimers used for tax planning purposes.

21 The bill provides certain definitions and defines
 22 "disclaimant" to mean a person who would have received the
 23 disclaimed property or power if the disclaimer had not been
 24 made, "disclaimed interest" to mean the interest that would
 25 have passed to the disclaimant had the disclaimer not been
 26 made, and "disclaimer" to mean the refusal to accept an
 27 interest in or power over property.

28 The bill provides that any disclaimer which is qualified
 29 for estate and gift tax purposes under the Internal Revenue
 30 Code is also a valid disclaimer under this bill even if the
 31 disclaimer does not otherwise meet the specific requirements
 32 of the bill.

33 The bill specifies that persons and fiduciaries as defined
 34 under the bill have broad powers to disclaim both interests in
 35 and powers over property, regardless of whether the disclaimed

1 interest is vested. The bill makes ineffective any attempt to
2 limit the right to disclaim which the creator of the interest
3 or nonfiduciary power seeks to impose on a person. The bill
4 also specifies the formal requirements of a disclaimer, and
5 specifically allows a partial disclaimer of an interest in
6 property or of a power over property. The bill also specifies
7 that a disclaimer is irrevocable on the later date to occur of
8 either delivery or filing, or the effective date of the
9 disclaimer, and provides that a disclaimer must be irrevocable
10 in order to be a qualified disclaimer for tax purposes.

11 The bill provides certain rules related to the effect of a
12 disclaimer on interests in property, including both present
13 and future interests, certain rules related to a disclaimer of
14 rights of survivorship in jointly held property, a disclaimer
15 of interest by a trustee, a disclaimer of a power of
16 appointment or other power not held by a fiduciary, a
17 disclaimer by an appointee, object, or taker in default of an
18 exercise of a power of appointment, and a disclaimer by a
19 fiduciary.

20 The bill further specifies certain rules related to the
21 delivery or filing of a disclaimer, depending on the manner in
22 which the disclaimer was created, and specifies certain
23 circumstances under which a disclaimer is barred or limited.

24 The bill further provides that a disclaimer under the
25 provisions of the bill constitutes a transfer of assets for
26 the purpose of determining eligibility for medical assistance
27 benefits under Code chapter 249A in an amount equal to the
28 value of the property, interest, or right disclaimed.

29 The bill specifies certain amendments relating to the trust
30 code. The bill provides that burial, funeral, and perpetual
31 trusts are exempted from the trust code, specifies the
32 circumstances under which a spendthrift trust is created to
33 restrain both voluntary and involuntary transfers of the
34 beneficiary's interest, and circumstances under which such a
35 trust may be available to a creditor, provides for an award of

1 attorney fees and costs in a judicial proceeding involving the
2 administration of a trust, and provides that in the absence of
3 contrary evidence, discretionary language granting a trustee
4 discretion to make or withhold a distribution shall prevail
5 over any language indicating that the beneficiary may have a
6 legally enforceable right to distributions or indicating a
7 standard for payments or distributions.

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SENATE FILE 2167

AN ACT

RELATING TO THE IOWA PROBATE CODE, INCLUDING PROVISIONS
RELATING TO ESTATE RECOVERY OF MEDICAL ASSISTANCE BENEFITS,
THE POWER TO DISCLAIM PROPERTY INTERESTS, AND TRUSTS.

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

Section 1. Section 249A.3, subsection 11, paragraph c,
Code Supplement 2003, is amended to read as follows:

c. A disclaimer of any property, interest, or right
pursuant to section ~~633.704~~ 633.704E constitutes a transfer of
assets for the purpose of determining eligibility for medical
assistance in an amount equal to the value of the property,
interest, or right disclaimed.

Sec. 2. Section 633.356, subsection 1, unnumbered
paragraph 1, Code 2003, is amended to read as follows:

When the gross value of the decedent's personal property
does not exceed twenty-five thousand dollars and there is no
real property or the real property passes to persons exempt
from inheritance tax pursuant to section 450.9 as joint
tenants with right of survivorship, and if forty days have
elapsed since the death of the decedent, the successor of the
decedent as defined in subsection 2 may, by filing an
affidavit prepared pursuant to subsection 3 or 8, and without
procuring letters of appointment, do any of the following with
respect to one or more particular items of personal property:

Sec. 3. Section 633.356, subsection 3, paragraph a, Code
2003, is amended to read as follows:

a. The decedent's name, social security number, and the
date and place of the decedent's death.

Sec. 4. Section 633.356, subsection 4, unnumbered
paragraph 3, Code 2003, is amended to read as follows:

Judgments rendered by any court in this state and mortgages
belonging to a decedent whose personal property is being
distributed pursuant to this section may, without prior order
of court, be released, discharged, or assigned, in whole or in
part, as to any particular property, and deeds may be executed
in performance of real estate contracts entered into by the
decedent, where an affidavit made pursuant to subsection 3 or
8 is filed in the office of the county recorder of the county
wherein any judgment, mortgage, or real estate contract
appears of record.

Sec. 5. Section 633.356, subsection 7, unnumbered
paragraph 1, Code 2003, is amended to read as follows:

If the requirements of this section are satisfied, receipt
by the holder of the decedent's property of the affidavit
under subsection 3 or 8 constitutes sufficient acquittance for
the payment of money, delivery of property, or transferring
the registered ownership of property pursuant to this chapter
and discharges the holder from any further liability with
respect to the money or property. The holder may rely in good
faith on the statements in the affidavit and has no duty to
inquire into the truth of any statement in the affidavit.

Sec. 6. Section 633.356, subsection 8, Code 2003, is
amended to read as follows:

8. a. When a deceased distributee is entitled to money or
property claimed in an affidavit presented under this section
with respect to a deceased person whose estate is being
administered in this state, the personal representative of the
person whose estate is being administered shall present the
affidavit to the court in which the estate is being
administered. The court shall direct the personal
representative to pay the money or deliver the property to the
person identified by the affidavit as the successor of the
deceased distributee to the extent that the court determines

that the deceased distributee was entitled to the money or property under the will or the laws of intestate succession.

b. When the department of human services is entitled to money or property of a decedent pursuant to section 249A.5, subsection 2, and no affidavit has been presented by a successor of the decedent as defined in subsection 2, within ninety days of the date of the decedent's death, the funds in the account, up to the amount of the claim of the department, shall be paid to the department upon presentation by the department or an entity designated by the department of an affidavit to the holder of the decedent's property. Such affidavit shall include the information specified in subsection 3, except that the department may submit proof of payment of funeral expenses as verification of the decedent's death instead of a certified copy of the decedent's death certificate. The amount of the department's claim shall also be included in the affidavit, which shall entitle the department to receive the funds as a successor of the decedent. The department shall issue a refund within sixty days to any claimant with a superior priority pursuant to section 633.425, if notice of such claim is given to the department, or to the entity designated by the department to receive notice, within one year of the department's receipt of funds.

Sec. 7. Section 633.647, subsection 7, Code 2003, is amended to read as follows:

7. To exercise the right to disclaim on behalf of the ward as provided in section ~~633.704~~ 633.704E.

Sec. 8. NEW SECTION. 633.704A SHORT TITLE.

This division shall be known and may be cited as the "Iowa Uniform Disclaimer of Property Interest Act".

Sec. 9. NEW SECTION. 633.704B DEFINITIONS.

For purposes of this division, the following definitions shall apply:

1. "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

2. "Disclaimed interest" means the interest the disclaimant refuses to accept that would have passed to the disclaimant had the disclaimer not been made.

3. "Disclaimer" means the refusal to accept an interest in or power over property.

4. "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

5. "Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

6. "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

7. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes any Indian tribe or band, or Alaskan village, recognized by federal law or formally acknowledged by a state.

8. "Trust" means any of the following:

a. An express trust, charitable or noncharitable, with additions thereto, whenever and however created.

b. A trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

Sec. 10. NEW SECTION. 633.704C SCOPE.

This division applies to disclaimers of any interest in or power over property, whenever and however created.

Sec. 11. NEW SECTION. 633.704D TAX QUALIFIED DISCLAIMER.

Notwithstanding any other provision of this division, any disclaimer or transfer that meets the requirements of section 2518 of the Internal Revenue Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, for the purpose of being a tax qualified disclaimer with the effect that the disclaimed or transferred interest is treated as never having been transferred to the disclaimant is effective as a disclaimer under this division.

Sec. 12. NEW SECTION. 633.704E POWER TO DISCLAIM -- GENERAL REQUIREMENTS -- WHEN IRREVOCABLE.

1. A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whenever and however acquired. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

2. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, or a disclaimer by a fiduciary would be a breach of trust, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if the creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

3. To be effective, a disclaimer must be in writing or other record, declare the disclaimer, describe the interest or

power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in section 633.704L. In this subsection, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

4. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

5. A disclaimer becomes irrevocable when it is delivered or filed pursuant to section 633.704L or when it becomes effective as provided in sections 633.704F through 633.704K, whichever occurs later.

6. A disclaimer made under this division is not a transfer, assignment, or release.

Sec. 13. NEW SECTION. 633.704F EFFECT OF DISCLAIMER OF INTEREST IN PROPERTY.

1. As used in this section:

a. "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

b. "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

2. Except for a disclaimer governed by section 633.704G or 633.704H, the following rules apply to a disclaimer of an interest in property:

a. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

b. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

c. If the instrument does not contain a provision described in paragraph "b", the following rules shall apply:

(1) If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(2) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

d. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant of the preceding interest is not accelerated in possession or enjoyment.

e. For purposes of this section, if an individual disclaims a future interest not held in trust, the disclaimed future interest passes as if that interest had been held in trust.

Sec. 14. NEW SECTION. 633.704G DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN JOINTLY HELD PROPERTY.

1. Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of the following:

a. A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates.

b. All of the property, except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

2. A disclaimer under subsection 1 takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

3. An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Sec. 15. NEW SECTION. 633.704H DISCLAIMER OF INTEREST BY TRUSTEE.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

Sec. 16. NEW SECTION. 633.704I DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules shall apply:

1. If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

3. The instrument creating the power is construed as if the power expired when the disclaimer became effective.

Sec. 17. NEW SECTION. 633.704J DISCLAIMER BY APPOINTEE, OBJECT, OR TAKER IN DEFAULT OF EXERCISE OF POWER OF APPOINTMENT.

1. For purposes of this section, all of the following rules shall apply:

a. An appointee is a person to whom a holder of a power has effectively appointed the property subject to the power.

b. An object of a power is a person to whom a holder of a power may appoint the property subject to the power sometime in the future.

c. A taker in default of the exercise of a power of appointment is a person designated by the person creating the power in the holder to take the property subject to the power if the power has not been effectively exercised.

2. A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the

instrument by which the holder exercises the power becomes irrevocable.

3. A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

Sec. 18. NEW SECTION. 633.704K DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY.

1. If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

3. A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

Sec. 19. NEW SECTION. 633.704L DELIVERY OR FILING.

1. For the purposes of this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of any of the following:

- a. An annuity or insurance policy.
- b. An account with a designation for payment on death.
- c. A security registered in beneficiary form.
- d. A pension, profit-sharing, retirement, or other employment-related benefit plan.
- e. Any other nonprobate transfer at death.

2. Subject to subsections 3 through 12, delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

3. In the case of an interest created under the law of intestate succession or an interest created by will, other

than an interest in a testamentary trust, the following shall apply:

a. A disclaimer must be delivered to the personal representative of the decedent's estate.

b. If no personal representative is then serving, a disclaimer must be filed with a court having jurisdiction to appoint the personal representative.

4. In the case of an interest in a testamentary trust, one of the following shall apply:

a. A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate.

b. If no personal representative is then serving, a disclaimer shall be filed with a court having jurisdiction to enforce the trust.

5. In the case of an interest in an inter vivos trust, one of the following shall apply:

a. A disclaimer must be delivered to the trustee then serving.

b. If no trustee is then serving, a disclaimer must be filed with a court having jurisdiction to enforce the trust.

c. If a disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

6. In the case of a disclaimer of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

7. In the case of a disclaimer of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, the disclaimer must be delivered to the person obligated to distribute the interest.

8. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

9. In the case of a disclaimer by an object or taker in default of an exercise of a power of appointment at any time after the power was created, one of the following shall apply:

a. The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power.

b. If no fiduciary is then serving, the disclaimer must be filed with a court having authority to appoint the fiduciary.

10. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, one of the following shall apply:

a. The disclaimer must be delivered to the holder, the personal representative of the holder's estate, or to the fiduciary under the instrument that created the power.

b. If no fiduciary is then serving, the disclaimer must be filed with a court having authority to appoint the fiduciary.

11. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection 3, 4, or 5, as if the power disclaimed were an interest in property.

12. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

13. In addition to the foregoing, all of the following shall apply:

a. A copy of any instrument of disclaimer affecting real estate shall be filed in the office of the county recorder of the county where the real estate is located. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

b. A copy of an instrument of disclaimer, regardless of its subject, may be filed with the clerk of court of the county in which proceedings for administration have been commenced, if applicable.

Sec. 20. NEW SECTION. 633.704M WHEN DISCLAIMER BARRED OR LIMITED.

1. A disclaimer is barred by a written waiver of the right to disclaim.

2. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

a. The disclaimant accepts the interest sought to be disclaimed.

b. The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so.

c. A judicial sale of the interest sought to be disclaimed occurs.

3. A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

4. A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

5. A disclaimer is barred or limited if so provided by law other than this division.

6. A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this division had the disclaimer not been barred.

Sec. 21. NEW SECTION. 633.704N DIVISION SUPPLEMENTED BY OTHER LAW.

1. Unless displaced by a provision of this division, the principles of law and equity supplement this division.

2. This division does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this division.

Sec. 22. NEW SECTION. 633.7040 MEDICAL ASSISTANCE ELIGIBILITY.

A disclaimer of any property, interest, or right pursuant to the provisions of this division constitutes a transfer of assets for the purpose of determining eligibility for medical assistance under chapter 249A in an amount equal to the value of the property, interest, or right disclaimed.

Sec. 23. NEW SECTION. 633.704P APPLICATION TO EXISTING RELATIONSHIP.

Except as otherwise provided in section 633.704M, an interest in or power over property existing on the effective date of this Act as to which the time for delivering or filing a disclaimer under law superseded by this division has not expired may be disclaimed after the effective date of this Act.

Sec. 24. NEW SECTION. 633.704Q SEVERABILITY.

If any provision of this division or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of the division which can be given effect without the invalid provisions or application, and to this end, the provisions of the division are severable.

Sec. 25. Section 633.1102, subsection 17, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. m. Burial, funeral, and perpetual care trusts.

Sec. 26. Section 633.1105, Code Supplement 2003, is amended to read as follows:

633.1105 TRUST PROVISIONS CONTROL.

The provisions terms of a trust shall always control and take precedence over any section of this trust code to the contrary. If a provision term of the trust instrument modifies or makes any section of this trust code inapplicable to a the trust, the common law shall apply to any issues raised by such provision term.

Sec. 27. Section 633.2301, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

633.2301 SPENDTHRIFT PROTECTION RECOGNIZED.

Except as otherwise provided in section 633.2302, all of the following provisions shall apply:

1. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfers of the beneficiary's interest.

2. a. A creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the required distribution date.

b. For the purposes of this subsection, "mandatory distribution" means a distribution required by the express terms of the trust of any of the following:

(1) All of the income, net income, or principal of the trust.

(2) A fraction or percentage of the income or principal of the trust.

(3) A specific dollar amount from the trust.

c. A distribution that is subject to a condition shall not be considered a mandatory distribution.

3. If a creditor or assignee of a beneficiary is permitted to reach a mandatory distribution under this section, the sole remedy of the creditor or assignee shall be to apply to the court having jurisdiction of the trust after such reasonable period of time has expired for a judgment ordering the trustee to pay to the creditor or the assignee a sum of money equal to the lesser of the amount of the debt or assignment, or the amount of the mandatory distribution described in subsection 2. No other remedy, including but not limited to, attachment or garnishment of any interest in the trust, recovery of court

costs or attorney fees, or placing a lien of any type on any trust property or on the interest of any beneficiary in the trust, shall be permitted or ordered by any court. Any writing signed by the beneficiary allowing any remedy other than payment of the mandatory distribution not made to the beneficiary within a reasonable time after the required distribution date shall be void and shall not be enforced by any court.

4. A creditor or assignee of a beneficiary of a spendthrift trust shall not compel a distribution that is subject to the trustee's discretion if any of the following apply:

- a. The distribution is expressed in the form of a standard of distribution.
- b. The trustee has abused its discretion.

Sec. 28. Section 633.2302, Code 2003, is amended to read as follows:

633.2302 EXCEPTIONS TO SPENDTHRIFT PROTECTION.

A term of a trust prohibiting an involuntary transfer of a beneficiary's interest shall be invalid as against claims by any ~~of the following:~~

~~1--Any creditor of the beneficiary if the beneficiary is the settlor.~~

~~2--Any creditor of the beneficiary as to a distribution to be made upon an event terminating or partially terminating the trust.~~

Sec. 29. NEW SECTION. 633.4507 ATTORNEY FEES AND COSTS.

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Sec. 30. NEW SECTION. 633.4702 DISCRETIONARY LANGUAGE PREVAILS OVER OTHER STANDARD.

In the absence of clear and convincing evidence to the contrary, language in a governing instrument granting a trustee discretion to make or withhold a distribution shall prevail over any language in the governing instrument indicating that the beneficiary may have a legally enforceable right to distributions or indicating a standard for payments or distributions.

Sec. 31. Section 633.704, Code 2003, is repealed.

JEFFREY M. LAMBERTI
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2167, Eightieth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2004

THOMAS J. VILSACK
Governor