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SENATE FILE 379
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1251)

Passed Senate, Date 3-22-05 Passed House, Date _____
Vote: Ayes 49 Nays 0 Vote: Ayes _____ Nays _____
Approved 4/19/05

A BILL FOR

1 An Act relating to the Iowa probate code, the Iowa trust code,
2 and certain other trusts.

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

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SF 379

1 Section 1. Section 249A.3, subsection 11, paragraph d,
2 Code 2005, is amended to read as follows:

3 d. Failure of a surviving spouse to take ~~against-a-will~~ an
4 elective share pursuant to chapter 633, division V,
5 constitutes a transfer of assets for the purpose of
6 determining eligibility for medical assistance to the extent
7 that the value received by taking ~~against-the-will~~ an elective
8 share would have exceeded the value of the inheritance
9 received under the will.

10 Sec. 2. Section 633.3, subsection 15, Code 2005, is
11 amended by striking the subsection and inserting in lieu
12 thereof the following:

13 15. ESTATE -- the real and personal property of either a
14 decedent or a ward, and may also refer to the real and
15 personal property of a trust as defined in section 633.10.

16 Sec. 3. Section 633.3, subsection 17, Code 2005, is
17 amended to read as follows:

18 17. FIDUCIARY -- includes personal representative,
19 executor, administrator, guardian, conservator, and the
20 trustee of any trust as defined in section 633.10.

21 Sec. 4. Section 633.3, subsection 34, Code 2005, is
22 amended to read as follows:

23 34. TRUSTEE -- the person or persons ~~appointed-as-trustee~~
24 ~~by-the-instrument-creating-the-trust, or the person or persons~~
25 ~~appointed-by-the-court-to-administer-the-trust~~ serving as
26 trustee of a trust as defined in section 633.10.

27 Sec. 5. Section 633.3, subsection 35, Code 2005, is
28 amended by striking the subsection and inserting in lieu
29 thereof the following:

30 35. TRUSTS -- includes only those trusts defined in
31 section 633.10.

32 Sec. 6. Section 633.10, unnumbered paragraph 1, Code 2005,
33 is amended to read as follows:

34 The In addition to the jurisdiction granted the district
35 court under the trust code or elsewhere, the district court

1 sitting in probate shall have jurisdiction of:

2 Sec. 7. Section 633.10, subsection 2, Code 2005, is
3 amended to read as follows:

4 2. CONSTRUCTION OF WILLS ~~AND-TRUST-INSTRUMENTS~~.

5 The construction of wills ~~and-trust-instruments~~ during the
6 administration of the estate ~~or-trust~~, whether said
7 construction be incident to such administration, or as a
8 separate proceeding.

9 Sec. 8. Section 633.10, subsection 4, Code 2005, is
10 amended by striking the subsection and inserting in lieu
11 thereof the following:

12 4. TRUSTS AND TRUSTEES.

13 a. The ongoing administration and supervision, including
14 but not limited to the appointment of trustees, the granting
15 of letters of trusteeship, trust administration, and trust
16 settlement and closing, of the following trusts:

17 (1) A trust that was in existence on July 1, 2005, and
18 that is subject to continuous court supervision.

19 (2) A trust established by court decree that is subject to
20 continuous court supervision.

21 b. A trust described in paragraph "a" shall be governed by
22 this chapter and the provisions of chapter 633A which are not
23 inconsistent with the provisions of this chapter.

24 c. A trust not described in paragraph "a" shall be
25 governed exclusively by chapter 633A and shall be subject to
26 the jurisdiction of the district court sitting in probate only
27 as provided in section 633.6101.

28 d. Upon joint application by all trustees administering a
29 trust described in paragraph "a" and following notice to the
30 beneficiaries pursuant to section 633.40, the court shall
31 release the trust from further jurisdiction unless a
32 beneficiary objects. The court whose decree created the trust
33 may release the trust from continuous court supervision
34 following notice to the beneficiary pursuant to section
35 633.40. If such judicial release occurs for a trust

1 previously governed by this chapter, such trust shall be
2 governed by chapter 633A and the district court sitting in
3 probate only as provided in section 633.6101.

4 Sec. 9. Section 633.27, subsection 4, Code 2005, is
5 amended to read as follows:

6 4. The title of each trust ~~where-letters-of-trusteeship~~
7 are-issued described in section 633.10 that has not been
8 released by the court from continuous court supervision.

9 Sec. 10. Section 633.108, Code 2005, is amended to read as
10 follows:

11 633.108 SMALL DISTRIBUTIONS TO MINORS -- PAYMENT.

12 Whenever a minor becomes entitled under the terms of a will
13 to a bequest or legacy, or to a share of the estate of an
14 intestate, ~~or-to-a-beneficial-interest-in-a-trust-fund-upon~~
15 ~~the-distribution-of-the-trust-fund,~~ and the value of the
16 bequest, legacy, or share, ~~or-interest~~ does not exceed the sum
17 of ~~ten~~ twenty-five thousand dollars, the personal
18 representative ~~or-trustee~~ may pay the bequest, legacy, or
19 share, ~~or-interest~~ to a custodian under any uniform transfers
20 to minors Act. Receipt by the custodian, when presented to
21 the court or filed with the report of distribution of the
22 fiduciary, shall have the same force and effect as though the
23 payment had been made to a duly appointed and qualified
24 conservator for the minor.

25 Sec. 11. Section 633.197, unnumbered paragraph 1, Code
26 2005, is amended to read as follows:

27 Personal representatives shall be allowed such reasonable
28 fees as may be determined by the court for services rendered,
29 but not in excess of the following commissions upon the gross
30 assets of the estate listed in the probate inventory ~~for-Iowa~~
31 ~~inheritance-tax-purposes~~, which shall be received as full
32 compensation for all ordinary services:

33 Sec. 12. Section 633.236, Code 2005, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 633.236 RIGHT OF ELECTIVE SHARE OF SURVIVING SPOUSE.

2 When a married person domiciled in Iowa at the time of
3 death dies, the surviving spouse shall have the right to take
4 an elective share under the provisions of sections 633.237
5 through 633.246. If the surviving spouse has a conservator,
6 the court may authorize or direct the conservator to elect the
7 share as the court deems appropriate under the circumstances.

8 Sec. 13. Section 633.237, Code 2005, is amended by
9 striking the section and inserting in lieu thereof the
10 following:

11 633.237 PRESUMPTION AGAINST FILING ELECTIVE SHARE.

12 1. Following the appointment of a personal representative
13 of the estate of the decedent, who is not the spouse, the
14 personal representative shall cause to be served a written
15 notice upon the surviving spouse pursuant to section 633.40,
16 subsection 5, notifying the surviving spouse that unless,
17 within four months after service of the notice, the spouse
18 files an election in writing with the clerk of court electing
19 the share as set forth in section 633.236, and sections
20 633.238 through 633.246, the spouse shall be deemed to take
21 under the will or to receive the intestate share. If, within
22 the four-month period following service of the notice, an
23 affidavit is filed setting forth that the surviving spouse is
24 incapable of making the election and does not have a
25 conservator, the personal representative shall make
26 application to the court for an order pursuant to section
27 633.244.

28 2. Following the death of a settlor of a revocable trust,
29 the trustee of such revocable trust who is not the spouse
30 shall cause to be served a written notice upon the surviving
31 spouse pursuant to section 633.40, subsection 5, notifying the
32 surviving spouse that unless, within four months after service
33 of the notice, the spouse files an election with the trustee
34 electing the share as set forth in section 633.236, and
35 sections 633.238 through 633.246, the spouse shall be deemed

1 to take under the terms of the revocable trust. If, within
2 the four-month period following service of the notice, an
3 affidavit is filed setting forth that the surviving spouse is
4 incapable of making the election and does not have a
5 conservator, the trustee shall make application to the court
6 for an order pursuant to section 633.244.

7 3. If the surviving spouse has a conservator, notice shall
8 be given to the conservator and the spouse pursuant to
9 subsections 1 and 2.

10 4. The notice provisions under subsections 1 and 2 are not
11 applicable if the surviving spouse is a personal
12 representative of the estate or a trustee of a revocable
13 trust. If the surviving spouse fails to file an election
14 under this section within four months of the decedent's death,
15 it shall be conclusively presumed that the surviving spouse
16 elects to take under the will, receive the intestate share, or
17 take under the revocable trust.

18 5. Upon application of the surviving spouse or the
19 spouse's conservator filed before the time for making the
20 election expires, the court may extend the period in which the
21 surviving spouse may make the election.

22 Sec. 14. Section 633.238, Code 2005, is amended by
23 striking the section and inserting in lieu thereof the
24 following:

25 633.238 ELECTIVE SHARE OF SURVIVING SPOUSE.

26 1. The elective share of the surviving spouse shall be all
27 of the following:

28 a. One-third in value of all the legal or equitable
29 estates in real property possessed by the decedent at any time
30 during the marriage which have not been sold on execution or
31 other judicial sale, and to which the surviving spouse has
32 made no express written relinquishment of right.

33 b. All personal property that, at the time of death, was
34 in the hands of the decedent as the head of a family, exempt
35 from execution.

1 c. One-third of all personal property of the decedent that
2 is not necessary for the payment of debts and charges.

3 d. One-third in value of the property held in trust not
4 necessary for the payment of debts and charges over which the
5 decedent was a grantor and retained at the time of death the
6 power to alter, amend, or revoke the trust, or over which the
7 decedent waived or rescinded any such power within one year of
8 the date of death, and to which the surviving spouse has not
9 made any express written relinquishment.

10 2. The elective share described in this section shall be
11 in lieu of any property the spouse would otherwise receive
12 under the last will and testament of the decedent through
13 intestacy or under the terms of a revocable trust.

14 Sec. 15. Section 633.239, Code 2005, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 633.239 SHARE TO EMBRACE HOMESTEAD.

18 The share of the surviving spouse in such real estate shall
19 be set off in such manner as to include the homestead, or so
20 much thereof as will be equal to the share allotted to the
21 spouse pursuant to section 633.238 unless the spouse prefers a
22 different arrangement, but no such different arrangement shall
23 be allowed unless there is sufficient property remaining to
24 pay the claims and charges against the decedent's estate.

25 Sec. 16. Section 633.240, Code 2005, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 633.240 ELECTION TO RECEIVE HOMESTEAD.

29 In estates in which the surviving spouse has filed an
30 election and in all intestate estates, whether an election is
31 filed or not, the surviving spouse or the spouse's
32 conservator, if applicable, may, in lieu of the spouse's share
33 in the real property possessed by the decedent at any time
34 during the marriage, which has not been sold on execution or
35 other judicial sale, and to which the surviving spouse has

1 made no express written relinquishment of right, elect to
2 receive a life estate in the homestead. Such election shall
3 be made and entered of record as provided in section 633.245.
4 In making such election, the surviving spouse shall have all
5 the rights as to the personal property provided in section
6 633.238, subsection 1, paragraphs "b", "c", and "d". In case
7 of failure to make such election, the right to receive the
8 life estate in the homestead shall be waived.

9 Sec. 17. Section 633.241, Code 2005, is amended by
10 striking the section and inserting in lieu thereof the
11 following:

12 633.241 TIME FOR ELECTION TO RECEIVE LIFE ESTATE IN
13 HOMESTEAD.

14 If the surviving spouse does not make an election to
15 receive the life estate in the homestead and file it with the
16 clerk within four months from the date of second publication
17 of notice to creditors, it shall be conclusively presumed that
18 the surviving spouse waives the right to make the election.
19 The court on application may, prior to the expiration of the
20 period of four months, for cause shown, enter an order
21 extending the time for making the election.

22 Sec. 18. Section 633.242, Code 2005, is amended by
23 striking the section and inserting in lieu thereof the
24 following:

25 633.242 RIGHTS OF ELECTION PERSONAL TO SURVIVING SPOUSE.

26 The right of the surviving spouse to take an elective
27 share, and the right of the surviving spouse to receive a life
28 estate in the homestead, are personal. They are not
29 transferable and cannot be exercised for the spouse subsequent
30 to the spouse's death. If the surviving spouse dies prior to
31 filing an election, it shall be conclusively presumed that the
32 surviving spouse does not take such elective share.

33 Sec. 19. Section 633.243, Code 2005, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 633.243 FILING ELECTIONS.

2 The filing of the elective share and the election to
3 receive a life estate in the homestead shall be filed in the
4 office of the clerk in which the decedent's estate is being
5 administered and served on the trustee of the revocable trust.
6 The court where the election is filed shall have exclusive
7 jurisdiction over all matters regarding elections under this
8 chapter.

9 Sec. 20. Section 633.244, Code 2005, is amended by
10 striking the section and inserting in lieu thereof the
11 following:

12 633.244 INCOMPETENT SPOUSE -- ELECTION BY COURT.

13 In case an affidavit is filed that the surviving spouse is
14 incapable of determining whether to take the elective share,
15 or to elect to receive a life estate in the homestead, and
16 does not have a conservator, the court shall fix a time and
17 place of hearing on the matter and cause a notice thereof to
18 be served upon the surviving spouse in such manner and for
19 such time as the court may direct. At the hearing, a guardian
20 ad litem shall be appointed to represent the spouse and the
21 court shall enter such orders as it deems appropriate under
22 the circumstances. The guardian ad litem shall be a
23 practicing attorney.

24 Sec. 21. Section 633.246A, Code 2005, is amended by
25 striking the section and inserting in lieu thereof the
26 following:

27 633.246A MEDICAL ASSISTANCE ELIGIBILITY.

28 Failure of a surviving spouse to make an election under
29 this division constitutes a transfer of assets for the purpose
30 of determining eligibility for medical assistance pursuant to
31 chapter 249A to the extent that the value received by making
32 the election would have exceeded the value of property
33 received absent the election.

34 Sec. 22. Section 633.247, Code 2005, is amended by
35 striking the section and inserting in lieu thereof the

1 following:

2 633.247 SETTING OFF ELECTIVE SHARE OF SURVIVING SPOUSE.

3 The share of the surviving spouse under section 633.236 may
4 be set off by the mutual consent of all parties in interest,
5 or by referees appointed by the court. An application to have
6 the share set off by referees shall be made by an interested
7 party in writing by filing with the clerk of court. A copy of
8 such application shall be sent to all interested parties.

9 Sec. 23. Section 633.248, Code 2005, is amended to read as
10 follows:

11 633.248 REFEREE -- NOTICE.

12 In the absence of mutual consent of all interested parties
13 to the appointment of referees, the court shall fix a time and
14 place for hearing upon such application and of the fact that
15 referees will be appointed if such application is granted, and
16 shall prescribe the time and manner of the service of notice
17 of the hearing.

18 Sec. 24. Section 633.252, Code 2005, is amended by
19 striking the section and inserting in lieu thereof the
20 following:

21 633.252 CONFIRMATION CONCLUSIVE -- POSSESSION.

22 An order confirming a report of the referee shall be
23 binding and conclusive unless appealed within thirty days and
24 the surviving spouse may bring an action to obtain possession
25 of any assets set apart to the surviving spouse. Such
26 elective share constitutes a judgment lien in favor of such
27 surviving spouse against the possessor of such assets.

28 Sec. 25. Section 633.264, Code 2005, is amended to read as
29 follows:

30 633.264 DISPOSAL OF PROPERTY BY WILL.

31 Subject to the rights of the surviving spouse to elect-to
32 take ~~against-the-will~~ an elective share as provided by section
33 633.236, any person of full age and sound mind may dispose by
34 will of all the person's property, except sufficient to pay
35 the debts and charges against the person's estate.

1 Sec. 26. Section 633.271, Code 2005, is amended to read as
2 follows:

3 633.271 EFFECT OF DIVORCE OR DISSOLUTION.

4 1. If after making a will the testator is divorced or the
5 testator's marriage is dissolved, all provisions in the will
6 in favor of the testator's spouse or of a relative of the
7 testator's spouse, including but not limited to dispositions,
8 appointments relating-to of property, and nominations to serve
9 in any fiduciary or representative capacity, are thereby
10 revoked by the divorce or dissolution of marriage, unless the
11 will provides otherwise.

12 2. In Unless the will provides otherwise, in the event the
13 testator and spouse remarry each other, the provisions of the
14 will revoked by the divorce or dissolution of marriage shall
15 be reinstated unless-otherwise-revoked-by-the-testator, except
16 for provisions in favor of a person who died prior to the
17 remarriage which shall not be reinstated.

18 3. For the purposes of this section, "relative of the
19 testator's spouse" means a person who is related to the
20 divorced testator's former spouse by blood, adoption, or
21 affinity, and who, subsequent to a divorce or dissolution of
22 marriage, ceased to be related to the testator by blood,
23 adoption, or affinity.

24 Sec. 27. Section 633.477, subsection 10, Code 2005, is
25 amended to read as follows:

26 10. A statement as to whether or not all statutory
27 requirements pertaining to taxes have been complied with ~~and-a~~
28 ~~statement-as-to~~ including whether the federal estate tax due
29 has been paid, and whether a lien continues to exist for any
30 federal estate tax, and whether inheritance tax was paid or a
31 return was filed in this state.

32 Sec. 28. Section 633.574, Code 2005, is amended to read as
33 follows:

34 633.574 PROCEDURE IN LIEU OF CONSERVATORSHIP.

35 If a conservator has not been appointed, money due a minor

1 or other property to which a minor is entitled, not exceeding
2 in the aggregate ~~ten~~ twenty-five thousand dollars in value,
3 shall be paid or delivered to a custodian under any uniform
4 transfers to minors Act. The written receipt of the custodian
5 constitutes an acquittance of the person making the payment of
6 money or delivery of property.

7 Sec. 29. Section 633.681, Code 2005, is amended to read as
8 follows:

9 633.681 ASSETS OF MINOR WARD EXHAUSTED.

10 When the assets of a minor ward's conservatorship are
11 exhausted or consist of personal property only of an aggregate
12 value not in excess of ~~ten~~ twenty-five thousand dollars, the
13 court, upon application or upon its own motion, may terminate
14 the conservatorship. The order for termination shall direct
15 the conservator to deliver any property remaining after the
16 payment of allowed claims and expenses of administration to a
17 custodian under any uniform transfers to minors Act. Such
18 delivery shall have the same force and effect as if delivery
19 had been made to the ward after attaining majority.

20 Sec. 30. Section 633.699, Code 2005, is amended by
21 striking the section and inserting in lieu thereof the
22 following:

23 633.699 POWERS OF TRUSTEES.

24 Unless it is otherwise provided by the will creating a
25 testamentary trust, the instrument creating an express trust,
26 or by an order or decree duly entered by a court of competent
27 jurisdiction, a trustee shall have all the powers granted a
28 trustee under sections 633.4401 and 633.4402. Documents
29 incorporating by reference powers granted a trustee under the
30 probate code or under this section shall be interpreted
31 accordingly, even if the execution or adoption of the
32 instrument creating the trust occurred prior to July 1, 2005.

33 Sec. 31. NEW SECTION. 633.699B APPLICABILITY OF LAW.

34 The terms of this division, and all other terms of this
35 probate code relating to trusts and trustees, shall apply only

1 to trusts that remain under continuous court supervision
2 pursuant to section 633.10 and to trusts that have not been
3 released from such continuous supervision pursuant to section
4 633.10. Regarding all such trusts, the terms of this chapter
5 shall supersede any inconsistent terms in the trust code and
6 such trusts shall be governed by terms of the trust code that
7 are not inconsistent with this probate code.

8 Sec. 32. Section 633.705, Code 2005, is amended by adding
9 the following new subsections:

10 NEW SUBSECTION. 3. Receipt of the affidavit described in
11 subsection 2 by the holder of the principal's property
12 constitutes sufficient acquittance for the payment of money,
13 delivery of property, or transfer of a registered ownership of
14 property as directed by the attorney in fact or agent and
15 discharges the holder from further liability with respect to
16 the money or property. The holder of the principal's property
17 may rely in good faith on the statements contained in the
18 affidavit and has no duty to inquire into the truth of any
19 statements in the affidavit.

20 NEW SUBSECTION. 4. If an attorney in fact or agent has
21 provided the affidavit described in subsection 2 and the
22 holder of the principal's property refuses to pay, deliver, or
23 transfer any property or evidence thereof within a reasonable
24 amount of time, the principal, acting through the attorney in
25 fact or agent, may recover the property or compel its payment,
26 delivery, or transfer in an action brought for that purpose
27 against the holder of the property.

28 a. If an action is brought against the holder under this
29 subsection and the court finds that the holder of the
30 principal's property acted unreasonably in refusing to pay,
31 deliver, or transfer the property as directed by the attorney
32 in fact, the court may award any or all of the following to
33 the principal:

- 34 (1) Damages sustained by the principal.
- 35 (2) Costs of the action.

1 (3) A penalty in an amount determined by the court, not
2 less than five hundred dollars or more than one thousand
3 dollars.

4 (4) Reasonable attorney fees, as determined by the court,
5 based on the value of the time reasonably expended by the
6 attorney and not by the amount of the recovery on behalf of
7 the principal.

8 b. No action shall be brought pursuant to this section
9 more than one year after the date of the occurrence of the
10 violation.

11 Sec. 33. Section 633.706, Code 2005, is amended by adding
12 the following new subsections:

13 NEW SUBSECTION. 4. Receipt, by the holder of the
14 principal's property, of the affidavit described in subsection
15 2 constitutes sufficient acquittance for the payment of money,
16 delivery of property, or transfer of the registered ownership
17 of property as directed by the attorney in fact or agent and
18 discharges the holder from any further liability to any person
19 with respect to the money or the property. The holder of the
20 principal's property may rely in good faith on the statements
21 in the affidavit and has no duty to inquire into the truth of
22 any of the statements in the affidavit.

23 NEW SUBSECTION. 5. If an attorney in fact or agent has
24 provided the affidavit described in subsection 2 and the
25 holder of the principal's property refuses to pay, deliver, or
26 transfer any property or evidence thereof within a reasonable
27 amount of time, the principal, acting through the attorney in
28 fact may recover the property or compel its payment, delivery,
29 or transfer in an action brought for that purpose against the
30 holder of the property.

31 a. If an action is brought against the holder under this
32 subsection and the court finds that the holder of the
33 principal's property acted unreasonably in refusing to pay,
34 deliver, or transfer the property as directed by the attorney
35 in fact, the court may award any or all of the following to

1 the principal:

2 (1) Damages sustained by the principal.

3 (2) Costs of the action.

4 (3) A penalty in an amount determined by the court, not
5 less than five hundred dollars or more than one thousand
6 dollars.

7 (4) Reasonable attorney fees, as determined by the court,
8 based on the value of the time reasonably expended by the
9 attorney and not by the amount of the recovery on behalf of
10 the principal.

11 b. No action shall be brought pursuant to this section
12 more than one year after the date of the occurrence of the
13 violation.

14 Sec. 34. Section 633.1102, Code 2005, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 0A. "Adjusted gross estate", as it
17 relates to a trust, means the same as defined in section
18 633.266.

19 Sec. 35. Section 633.1107, Code 2005, is amended to read
20 as follows:

21 633.1107 SCOPE OF TRUST CODE.

22 1. This Except as otherwise provided in subsection 2, this
23 trust code is-intended-to shall apply to trusts, as defined in
24 section 633.1102, subsection-177, that are intentionally
25 created, or deemed to be intentionally created, by individuals
26 and other entities.

27 2. With regard to trusts described in section 633.10, that
28 have not been judicially released from continuous court
29 supervision, this trust code shall apply only to the extent
30 not inconsistent with the relevant provisions of chapter 633.
31 With regard to all other trusts defined in section 633.1102,
32 the terms of chapter 633 shall be inapplicable, and the terms
33 of this trust code shall prevail over any inconsistent
34 provisions of Iowa law.

35 Sec. 36. Section 633.2208, Code 2005, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 3. By way of illustration and without
3 limitation, a trust may be divided pursuant to this section to
4 allow a trust to qualify as a marital deduction trust for tax
5 purposes, as a qualified subchapter S trust for federal income
6 tax purposes, as a separate trust for federal generation
7 skipping tax purposes, or for any other federal or state
8 income, estate, excise, or inheritance tax benefit, or to
9 facilitate the administration of a trust.

10 Sec. 37. Section 633.2301, subsection 4, unnumbered
11 paragraph 1, Code 2005, is amended to read as follows:

12 A creditor or assignee of a beneficiary of a spendthrift
13 trust ~~shall~~ may not compel a distribution that is subject to
14 the trustee's discretion ~~if-any-of-the-following-apply~~ despite
15 the fact that:

16 Sec. 38. Section 633.2303, Code 2005, is amended by adding
17 the following new subsection:

18 NEW SUBSECTION. 3. The assets of an irrevocable trust
19 shall not become subject to the claims of creditors of the
20 settlor of a trust solely due to a provision in the trust that
21 allows a trustee of the trust to reimburse the settlor for
22 income taxes payable on the income of the trust. This
23 subsection shall not limit the rights of a creditor of the
24 settlor to assert a claim against the assets of the trust due
25 to the retention or grant of any rights to the settlor under
26 the trust instrument or any other beneficial interest of the
27 settlor other than as specifically set forth in this
28 subsection.

29 Sec. 39. Section 633.3107, Code 2005, is amended to read
30 as follows:

31 633.3107 EFFECT OF DIVORCE OR DISSOLUTION.

32 1. If, after executing a revocable trust, the settlor is
33 divorced or the settlor's marriage is dissolved, all
34 provisions in the trust in favor of the settlor's spouse or of
35 a relative of the settlor's spouse, including, but not limited

1 to, dispositions, appointments of property, and nominations to
2 serve in any fiduciary or representative capacity are revoked
3 by divorce or dissolution of marriage unless the trust
4 instrument provides otherwise.

5 2. In Unless the trust instrument provides otherwise, in
6 the event the settlor and spouse remarry each other, the
7 provisions of the revocable trust revoked by the divorce or
8 dissolution of marriage shall be reinstated unless otherwise
9 modified by the settlor, except for provisions in favor of a
10 person who died prior to the remarriage which shall not be
11 reinstated.

12 For the purposes of this section, "relative of the
13 settlor's spouse" means a person who is related to the
14 divorced settlor's former spouse by blood, adoption, or
15 affinity, or who subsequent to the divorce or dissolution of
16 marriage ceased to be related to the settlor by blood,
17 adoption, or affinity.

18 Sec. 40. NEW SECTION. 633.3112 CLASSIFICATION OF DEBTS
19 AND CHARGES.

20 If a revocable trust becomes subject to the claims of a
21 settlor's creditors and the costs of administration of the
22 settlor's estate pursuant to section 633.3104, following the
23 payment of the proper costs of administration of the trust and
24 any claims against the trust, the debts and charges of the
25 settlor's estate payable by the trust shall be classified
26 pursuant to sections 633.425 and 633.426 as such sections
27 exist on the date of the settlor's death.

28 Sec. 41. Section 633.4701, Code 2005, is amended by adding
29 the following new subsection:

30 NEW SUBSECTION. 8A. For the purposes of this section, a
31 term of the trust requiring that a beneficiary survive a
32 person whose death does not make the beneficiary entitled to
33 possession or enjoyment of the beneficiary's interest in the
34 trust shall not be considered as "otherwise specifically
35 stated by the terms of the trust" nor as an "express condition

1 of survivorship imposed by the terms of the trust".

2 Sec. 42. Section 633.4701, subsection 9, Code 2005, is
3 amended to read as follows:

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

15 Sec. 43. NEW SECTION. 633.4703 GENERAL ORDER FOR
16 ABATEMENT.

17 Except as otherwise provided by the governing instrument,
18 where necessary to abate shares of the beneficiaries of a
19 trust for the payment of debts and charges, federal and state
20 estate taxes, bequests, and the shares of children born or
21 adopted after the execution of the trust, abatement shall
22 occur in the following order:

23 1. Shares allocated to the residuary beneficiaries of the
24 trust shall be abated first, on a pro rata basis.

25 2. Shares defined by a dollar amount, on a pro rata basis.

26 3. Shares described as specific items of property whether
27 tangible or intangible shall be abated last, and such
28 abatement shall be done as equitably by the trustee among the
29 various beneficiaries as circumstances reasonably allow.

30 4. Notwithstanding subsections 1, 2, or 3, a disposition
31 in favor of the grantor's surviving spouse shall not be abated
32 where such abatement would have the effect of increasing the
33 amount of federal estate or federal gift taxes payable by a
34 person or an entity.

35 Sec. 44. NEW SECTION. 633.4704 SIMULTANEOUS DEATH.

1 If the determination of the successor of a beneficial
2 interest in a trust is dependent upon whether a beneficiary
3 has survived the death of a settlor, of another beneficiary,
4 or of any other person, the uniform simultaneous death Act,
5 sections 633.523 through 633.528, shall govern the
6 determination of who shall be considered to have died first.

7 Sec. 45. NEW SECTION. 633.4705 PRINCIPAL AND INCOME.
8 Chapter 637 shall apply to trusts subject to this chapter.

9 Sec. 46. NEW SECTION. 633.4706 SMALL DISTRIBUTIONS TO
10 MINORS -- PAYMENT.

11 When a minor becomes entitled under the terms of the trust
12 to a beneficial interest in the trust upon the distribution of
13 the trust fund and the value of the interest does not exceed
14 the sum of twenty-five thousand dollars, the trustee may pay
15 the interest to a custodian under any uniform transfers to
16 minors Act. Receipt by the custodian shall have the same
17 force and effect as though payment had been made to a duly
18 appointed and qualified conservator for the minor.

19 Sec. 47. NEW SECTION. 633.5105 CHARITABLE TRUSTS.

20 In addition to the provisions of this chapter, a charitable
21 trust that is a private foundation shall be governed by the
22 provisions of chapter 634.

23 Sec. 48. Section 633.6101, Code 2005, is amended to read
24 as follows:

25 633.6101 SUBJECT MATTER JURISDICTION.

26 The district court sitting in probate has exclusive
27 jurisdiction of proceedings concerning the internal affairs of
28 a trust and of actions and proceedings to determine the
29 existence of a trust, actions and proceedings by or against
30 creditors or debtors of a trust, and other actions and
31 proceedings involving a trust and third persons. Such
32 jurisdiction may be invoked by any interested party at any
33 time.

34 Sec. 49. Sections 633.28, 633.699A, 633.703A, 633.703B,
35 633.7101, 636.60, 636.60A, 636.61, Code 2005, are repealed.

1 Sec. 50. Sections 633.2; 633.3, unnumbered paragraph 1;
2 633.3, subsections 7 and 20; 633.22, subsection 4; 633.34;
3 633.38; 633.40, subsection 1; 633.44; 633.46; 633.47; 633.71;
4 633.88; 633.118; 633.160; 633.162; 633.350; 633.365; 633.389;
5 633.433; 633.434; 633.500; 633.502; 633.597; 633.633;
6 633.633A; and 633.652, Code 2005, are amended by striking from
7 the applicable section, paragraph, or subsection the word
8 "Code" and inserting in lieu thereof the following: "probate
9 code".

10 Sec. 51. CODE EDITOR DIRECTIVE. Sections 633.707,
11 unnumbered paragraph 1; 633.711, subsection 2; 633.800;
12 633.801, unnumbered paragraph 1; 633.803; 633.807, subsections
13 2 and 7; 633.808; 633.809; 633.810; 633.901; 633.902,
14 unnumbered paragraph 1; 633.903; 633.904; 633.905, subsection
15 6; 633.913, subsections 5 and 6; 633.914; 633.915; 633.916;
16 633.917; 633.1101; 633.1102, unnumbered paragraph 1; and
17 633.1104; Code 2005, are amended by striking from the
18 applicable section, paragraph, or subsection the word
19 "division" and inserting in lieu thereof the following:
20 "chapter".

21 Sec. 52. CODE EDITOR DIRECTIVE. The Code editor is
22 directed to transfer from chapter 633, division XVII (sections
23 633.705 and 633.706), division XVIII (633.707 through
24 633.711), division XIX (633.800 through 633.811), and division
25 XX (633.901 through 633.917), as amended in this Act, to new
26 chapters 633B, 633C, 633D, and 633E, respectively.

27 Sec. 53. CODE EDITOR DIRECTIVE. The Code editor is
28 directed to transfer from chapter 633, sections 633.1101
29 through 633.1108, 633.2101 through 633.2107, 633.2201 through
30 633.2208, 633.2301 through 633.2303, 633.3101 through
31 633.3111, 633.4101 through 633.4111, 633.4201 through
32 633.4214, 633.4301 through 633.4309, 633.4401 and 633.4402,
33 633.4501 through 633.4507, 633.4601 through 633.4605, 633.4701
34 and 633.4702, 633.5101 through 633.5104, 633.6101 through
35 633.6105, 633.6201 and 633.6202, and 633.6301 through

1 633.6308, as amended in this Act, to new chapter 633A and to
2 retain the same section number designations.

3 Sec. 54. CODE EDITOR DIRECTIVE. The Code editor is
4 directed to correct internal references in the Code as
5 necessary due to the enactment of this Act.

6 EXPLANATION

7 This bill amends various provisions in the probate code,
8 and transfers certain divisions currently located in the
9 probate code (Code chapter 633) relating to trusts (division
10 XXI, also known as the Iowa trust code), powers of attorney
11 (division XVII), medical assistance trusts (division XVIII),
12 transfers on death security registration (division XIX), and
13 uniform disclaimer of property interest Act (division XX) from
14 the probate code to Code chapters 633A, 633B, 633C, 633D, and
15 633E, respectively. The bill also consolidates certain
16 provisions relating to trusts into the trust code.

17 The bill amends the definition of a trust subject to the
18 ongoing administration and supervision of the probate code to
19 specifically include a trust in existence on July 1, 2005, and
20 that is subject to continuous court supervision and a trust
21 established by court decree that is subject to continuous
22 court supervision. Such a trust shall be governed by both the
23 probate code and the trust code, as amended, where the
24 provisions of the trust code do not conflict with the
25 provisions of the probate code. Upon joint application by the
26 trustee administering a trust that is in existence on July 1,
27 2005, and subject to continuous court supervision, and
28 following notice to the appropriate beneficiaries, the court
29 shall release the trust from further jurisdiction of the
30 probate court unless a beneficiary objects. Conforming
31 amendments in both the probate code and the trust code
32 emphasize that all court proceedings regarding trusts shall be
33 governed by the district court sitting in probate.

34 The bill makes conforming Code changes, including repeals,
35 to sections of the probate code related to the amended

1 definition of a trust and the administration of the probate
2 docket.

3 The bill amends sections in the probate code relating to
4 small distributions of money to minors under the terms of a
5 will to a bequest or legacy or to a share of the estate of an
6 intestate, by increasing the size of the interest from \$10,000
7 to \$25,000. The bill creates a similar provision in the trust
8 code, as amended, relating to small distributions of money to
9 minors in regard to a beneficial interest in a trust fund.

10 The bill amends and repeals sections in the probate code
11 that were enacted prior to the creation of the trust code
12 relating to general default powers of a trustee, modification
13 or termination of uneconomical testamentary trusts, and the
14 creation and establishment of separate trusts.

15 The bill amends sections of the probate code relating to
16 the right of a surviving spouse to take an elective share of
17 the deceased spouse's estate including the right to receive a
18 share of the deceased spouse's revocable trust assets and the
19 right to elect a life estate in the homestead. Current law
20 provides that a surviving spouse may elect against the will of
21 a deceased spouse and claim a statutory share that does not
22 include property held in trust by the deceased spouse or the
23 right to elect a life estate in the homestead.

24 The bill amends sections of the probate code relating to
25 the revocation of spousal benefits in a testator's will upon
26 divorce or dissolution of the testator's marriage to include
27 relatives of the spouse who, after the divorce, are not
28 relatives of the testator, and duplicates the same amendments
29 relating to a settlor's revocable trust upon divorce or
30 dissolution of the settlor's marriage in the trust code, as
31 amended.

32 The bill amends a section of the probate code relating to a
33 personal representative's final report and fees paid to a
34 personal representative for services rendered.

35 The bill amends a section of the probate code relating to

1 the appointment of a probate referee.

2 The bill removes divisions in the probate code related to
3 powers of attorney (division XVII), medical assistance trusts
4 (division XVIII), transfers on death security registration
5 (division XIX), and uniform disclaimer of property interest
6 (division XX), from the probate code and creates separate Code
7 chapters 633B, 633C, 633D, and 633E, respectively. The bill
8 amends power of attorney provisions relating to the validity
9 of power of attorney instruments and financial institutions.

10 The bill removes the trust code (division XXI) from the
11 probate code, amends certain sections, and creates a separate
12 Code chapter (633A) for the trust code.

13 The bill amends sections of the trust code relating to the
14 scope of the trust code and trusts governed by the probate
15 code, parallel to the amended provisions regarding the
16 distinction between trusts subject to continuous court
17 supervision and trusts not subject to continuous court
18 supervision in the probate code. The bill also amends
19 sections of the trust code relating to the division of a trust
20 for tax purposes, the rights of creditors or transferees to
21 obtain trust assets, the effect of a divorce or dissolution on
22 a settlor's revocable trust, and trust construction provisions
23 relating to rights of survivorship and future interests.

24 The bill creates new sections in the trust code applying
25 the uniform simultaneous death Act and the uniform principal
26 and income Act to trusts subject to the trust code.

27 The bill repeals certain sections in Code chapter 636
28 relating to powers and duties of trustees of trusts not
29 subject to court administration, the validity of voluntary
30 trusts, and the definition of an adjusted gross estate in an
31 express trust not subject to probate court administration.

32 The bill directs the Code editor to transfer and recodify
33 the appropriate divisions and to make conforming internal
34 reference changes, as necessary.

35

SENATE FILE 379

S-3041

1 Amend Senate File 379 as follows:

2 1. Page 10, by inserting after line 23 the
3 following:

4 "Sec. ____ . Section 633.434, unnumbered paragraph
5 2, Code 2005, is amended to read as follows:

6 Upon the expiration of the later to occur of four
7 months after the date of the second publication of
8 notice to creditors or one month after the service of
9 the notice by ordinary mail upon all claimants whose
10 identities are reasonably ascertainable, at their last
11 known addresses and whose claims will not or may not
12 be paid or otherwise satisfied during administration,
13 the personal representative shall pay the debts and
14 charges against the estate in accordance with this
15 probate code. If it appears at any time that the
16 estate is or may be insolvent, that there are
17 insufficient funds on hand, or that there is other
18 good and sufficient cause, the personal representative
19 may report that fact to the court and apply for any
20 order that the personal representative deems
21 necessary."

22 2. Page 12, line 16, by inserting after the word
23 "property" the following: ", if the holder has taken
24 reasonable steps to verify the identity of the person
25 acting as attorney in fact or agent".

26 3. Page 13, line 19, by inserting after the word
27 "property" the following: ", if the holder has taken
28 reasonable steps to verify the identity of the person
29 acting as attorney in fact or agent".

30 4. Page 16, line 15, by striking the words "or
31 who" and inserting the following: "and who".

32 5. Page 16, line 16, by striking the word
33 "marriage" and inserting the following: "marriage".

34 6. Page 19, line 5, by striking the figure
35 "633.434;".

36 7. By renumbering as necessary.

By PAT WARD

KEITH A. KREIMAN

S-3041 FILED MARCH 21, 2005

1 Section 1. Section 249A.3, subsection 11, paragraph d,
2 Code 2005, is amended to read as follows:

3 d. Failure of a surviving spouse to take ~~against-a-will~~ an
4 elective share pursuant to chapter 633, division V,
5 constitutes a transfer of assets for the purpose of
6 determining eligibility for medical assistance to the extent
7 that the value received by taking ~~against-the-will~~ an elective
8 share would have exceeded the value of the inheritance
9 received under the will.

10 Sec. 2. Section 633.3, subsection 15, Code 2005, is
11 amended by striking the subsection and inserting in lieu
12 thereof the following:

13 15. ESTATE -- the real and personal property of either a
14 decedent or a ward, and may also refer to the real and
15 personal property of a trust as defined in section 633.10.

16 Sec. 3. Section 633.3, subsection 17, Code 2005, is
17 amended to read as follows:

18 17. FIDUCIARY -- includes personal representative,
19 executor, administrator, guardian, conservator, and the
20 trustee of any trust as defined in section 633.10.

21 Sec. 4. Section 633.3, subsection 34, Code 2005, is
22 amended to read as follows:

23 34. TRUSTEE -- the person or persons ~~appointed-as-trustee~~
24 ~~by-the-instrument-creating-the-trust,-or-the-person-or-persons~~
25 ~~appointed-by-the-court-to-administer-the-trust~~ serving as
26 trustee of a trust as defined in section 633.10.

27 Sec. 5. Section 633.3, subsection 35, Code 2005, is
28 amended by striking the subsection and inserting in lieu
29 thereof the following:

30 35. TRUSTS -- includes only those trusts defined in
31 section 633.10.

32 Sec. 6. Section 633.10, unnumbered paragraph 1, Code 2005,
33 is amended to read as follows:

34 The In addition to the jurisdiction granted the district
35 court under the trust code or elsewhere, the district court

1 sitting in probate shall have jurisdiction of:

2 Sec. 7. Section 633.10, subsection 2, Code 2005, is
3 amended to read as follows:

4 2. CONSTRUCTION OF WILLS ~~AND TRUST INSTRUMENTS~~.

5 The construction of wills ~~and trust instruments~~ during the
6 administration of the estate ~~or trust~~, whether said
7 construction be incident to such administration, or as a
8 separate proceeding.

9 Sec. 8. Section 633.10, subsection 4, Code 2005, is
10 amended by striking the subsection and inserting in lieu
11 thereof the following:

12 4. TRUSTS AND TRUSTEES.

13 a. The ongoing administration and supervision, including
14 but not limited to the appointment of trustees, the granting
15 of letters of trusteeship, trust administration, and trust
16 settlement and closing, of the following trusts:

17 (1) A trust that was in existence on July 1, 2005, and
18 that is subject to continuous court supervision.

19 (2) A trust established by court decree that is subject to
20 continuous court supervision.

21 b. A trust described in paragraph "a" shall be governed by
22 this chapter and the provisions of chapter 633A which are not
23 inconsistent with the provisions of this chapter.

24 c. A trust not described in paragraph "a" shall be
25 governed exclusively by chapter 633A and shall be subject to
26 the jurisdiction of the district court sitting in probate only
27 as provided in section 633.6101.

28 d. Upon joint application by all trustees administering a
29 trust described in paragraph "a" and following notice to the
30 beneficiaries pursuant to section 633.40, the court shall
31 release the trust from further jurisdiction unless a
32 beneficiary objects. The court whose decree created the trust
33 may release the trust from continuous court supervision
34 following notice to the beneficiary pursuant to section
35 633.40. If such judicial release occurs for a trust

1 previously governed by this chapter, such trust shall be
2 governed by chapter 633A and the district court sitting in
3 probate only as provided in section 633.6101.

4 Sec. 9. Section 633.27, subsection 4, Code 2005, is
5 amended to read as follows:

6 4. The title of each trust ~~where-letters-of-trusteeship~~
7 are-issued described in section 633.10 that has not been
8 released by the court from continuous court supervision.

9 Sec. 10. Section 633.108, Code 2005, is amended to read as
10 follows:

11 633.108 SMALL DISTRIBUTIONS TO MINORS -- PAYMENT.

12 Whenever a minor becomes entitled under the terms of a will
13 to a bequest or legacy, or to a share of the estate of an
14 intestate, ~~or-to-a-beneficial-interest-in-a-trust-fund-upon~~
15 ~~the-distribution-of-the-trust-fund,~~ and the value of the
16 bequest, legacy, or share, ~~or-interest~~ does not exceed the sum
17 of ~~ten~~ twenty-five thousand dollars, the personal
18 representative ~~or-trustee~~ may pay the bequest, legacy, or
19 share, ~~or-interest~~ to a custodian under any uniform transfers
20 to minors Act. Receipt by the custodian, when presented to
21 the court or filed with the report of distribution of the
22 fiduciary, shall have the same force and effect as though the
23 payment had been made to a duly appointed and qualified
24 conservator for the minor.

25 Sec. 11. Section 633.197, unnumbered paragraph 1, Code
26 2005, is amended to read as follows:

27 Personal representatives shall be allowed such reasonable
28 fees as may be determined by the court for services rendered,
29 but not in excess of the following commissions upon the gross
30 assets of the estate listed in the probate inventory ~~for-Iowa~~
31 ~~inheritance-tax-purposes~~, which shall be received as full
32 compensation for all ordinary services:

33 Sec. 12. Section 633.236, Code 2005, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 633.236 RIGHT OF ELECTIVE SHARE OF SURVIVING SPOUSE.

2 When a married person domiciled in Iowa at the time of
3 death dies, the surviving spouse shall have the right to take
4 an elective share under the provisions of sections 633.237
5 through 633.246. If the surviving spouse has a conservator,
6 the court may authorize or direct the conservator to elect the
7 share as the court deems appropriate under the circumstances.

8 Sec. 13. Section 633.237, Code 2005, is amended by
9 striking the section and inserting in lieu thereof the
10 following:

11 633.237 PRESUMPTION AGAINST FILING ELECTIVE SHARE.

12 1. Following the appointment of a personal representative
13 of the estate of the decedent, who is not the spouse, the
14 personal representative shall cause to be served a written
15 notice upon the surviving spouse pursuant to section 633.40,
16 subsection 5, notifying the surviving spouse that unless,
17 within four months after service of the notice, the spouse
18 files an election in writing with the clerk of court electing
19 the share as set forth in section 633.236, and sections
20 633.238 through 633.246, the spouse shall be deemed to take
21 under the will or to receive the intestate share. If, within
22 the four-month period following service of the notice, an
23 affidavit is filed setting forth that the surviving spouse is
24 incapable of making the election and does not have a
25 conservator, the personal representative shall make
26 application to the court for an order pursuant to section
27 633.244.

28 2. Following the death of a settlor of a revocable trust,
29 the trustee of such revocable trust who is not the spouse
30 shall cause to be served a written notice upon the surviving
31 spouse pursuant to section 633.40, subsection 5, notifying the
32 surviving spouse that unless, within four months after service
33 of the notice, the spouse files an election with the trustee
34 electing the share as set forth in section 633.236, and
35 sections 633.238 through 633.246, the spouse shall be deemed

1 to take under the terms of the revocable trust. If, within
2 the four-month period following service of the notice, an
3 affidavit is filed setting forth that the surviving spouse is
4 incapable of making the election and does not have a
5 conservator, the trustee shall make application to the court
6 for an order pursuant to section 633.244.

7 3. If the surviving spouse has a conservator, notice shall
8 be given to the conservator and the spouse pursuant to
9 subsections 1 and 2.

10 4. The notice provisions under subsections 1 and 2 are not
11 applicable if the surviving spouse is a personal
12 representative of the estate or a trustee of a revocable
13 trust. If the surviving spouse fails to file an election
14 under this section within four months of the decedent's death,
15 it shall be conclusively presumed that the surviving spouse
16 elects to take under the will, receive the intestate share, or
17 take under the revocable trust.

18 5. Upon application of the surviving spouse or the
19 spouse's conservator filed before the time for making the
20 election expires, the court may extend the period in which the
21 surviving spouse may make the election.

22 Sec. 14. Section 633.238, Code 2005, is amended by
23 striking the section and inserting in lieu thereof the
24 following:

25 633.238 ELECTIVE SHARE OF SURVIVING SPOUSE.

26 1. The elective share of the surviving spouse shall be all
27 of the following:

28 a. One-third in value of all the legal or equitable
29 estates in real property possessed by the decedent at any time
30 during the marriage which have not been sold on execution or
31 other judicial sale, and to which the surviving spouse has
32 made no express written relinquishment of right.

33 b. All personal property that, at the time of death, was
34 in the hands of the decedent as the head of a family, exempt
35 from execution.

1 c. One-third of all personal property of the decedent that
2 is not necessary for the payment of debts and charges.

3 d. One-third in value of the property held in trust not
4 necessary for the payment of debts and charges over which the
5 decedent was a grantor and retained at the time of death the
6 power to alter, amend, or revoke the trust, or over which the
7 decedent waived or rescinded any such power within one year of
8 the date of death, and to which the surviving spouse has not
9 made any express written relinquishment.

10 2. The elective share described in this section shall be
11 in lieu of any property the spouse would otherwise receive
12 under the last will and testament of the decedent through
13 intestacy or under the terms of a revocable trust.

14 Sec. 15. Section 633.239, Code 2005, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 633.239 SHARE TO EMBRACE HOMESTEAD.

18 The share of the surviving spouse in such real estate shall
19 be set off in such manner as to include the homestead, or so
20 much thereof as will be equal to the share allotted to the
21 spouse pursuant to section 633.238 unless the spouse prefers a
22 different arrangement, but no such different arrangement shall
23 be allowed unless there is sufficient property remaining to
24 pay the claims and charges against the decedent's estate.

25 Sec. 16. Section 633.240, Code 2005, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 633.240 ELECTION TO RECEIVE HOMESTEAD.

29 In estates in which the surviving spouse has filed an
30 election and in all intestate estates, whether an election is
31 filed or not, the surviving spouse or the spouse's
32 conservator, if applicable, may, in lieu of the spouse's share
33 in the real property possessed by the decedent at any time
34 during the marriage, which has not been sold on execution or
35 other judicial sale, and to which the surviving spouse has

1 made no express written relinquishment of right, elect to
2 receive a life estate in the homestead. Such election shall
3 be made and entered of record as provided in section 633.245.
4 In making such election, the surviving spouse shall have all
5 the rights as to the personal property provided in section
6 633.238, subsection 1, paragraphs "b", "c", and "d". In case
7 of failure to make such election, the right to receive the
8 life estate in the homestead shall be waived.

9 Sec. 17. Section 633.241, Code 2005, is amended by
10 striking the section and inserting in lieu thereof the
11 following:

12 633.241 TIME FOR ELECTION TO RECEIVE LIFE ESTATE IN
13 HOMESTEAD.

14 If the surviving spouse does not make an election to
15 receive the life estate in the homestead and file it with the
16 clerk within four months from the date of second publication
17 of notice to creditors, it shall be conclusively presumed that
18 the surviving spouse waives the right to make the election.
19 The court on application may, prior to the expiration of the
20 period of four months, for cause shown, enter an order
21 extending the time for making the election.

22 Sec. 18. Section 633.242, Code 2005, is amended by
23 striking the section and inserting in lieu thereof the
24 following:

25 633.242 RIGHTS OF ELECTION PERSONAL TO SURVIVING SPOUSE.

26 The right of the surviving spouse to take an elective
27 share, and the right of the surviving spouse to receive a life
28 estate in the homestead, are personal. They are not
29 transferable and cannot be exercised for the spouse subsequent
30 to the spouse's death. If the surviving spouse dies prior to
31 filing an election, it shall be conclusively presumed that the
32 surviving spouse does not take such elective share.

33 Sec. 19. Section 633.243, Code 2005, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 633.243 FILING ELECTIONS.

2 The filing of the elective share and the election to
3 receive a life estate in the homestead shall be filed in the
4 office of the clerk in which the decedent's estate is being
5 administered and served on the trustee of the revocable trust.
6 The court where the election is filed shall have exclusive
7 jurisdiction over all matters regarding elections under this
8 chapter.

9 Sec. 20. Section 633.244, Code 2005, is amended by
10 striking the section and inserting in lieu thereof the
11 following:

12 633.244 INCOMPETENT SPOUSE -- ELECTION BY COURT.

13 In case an affidavit is filed that the surviving spouse is
14 incapable of determining whether to take the elective share,
15 or to elect to receive a life estate in the homestead, and
16 does not have a conservator, the court shall fix a time and
17 place of hearing on the matter and cause a notice thereof to
18 be served upon the surviving spouse in such manner and for
19 such time as the court may direct. At the hearing, a guardian
20 ad litem shall be appointed to represent the spouse and the
21 court shall enter such orders as it deems appropriate under
22 the circumstances. The guardian ad litem shall be a
23 practicing attorney.

24 Sec. 21. Section 633.246A, Code 2005, is amended by
25 striking the section and inserting in lieu thereof the
26 following:

27 633.246A MEDICAL ASSISTANCE ELIGIBILITY.

28 Failure of a surviving spouse to make an election under
29 this division constitutes a transfer of assets for the purpose
30 of determining eligibility for medical assistance pursuant to
31 chapter 249A to the extent that the value received by making
32 the election would have exceeded the value of property
33 received absent the election.

34 Sec. 22. Section 633.247, Code 2005, is amended by
35 striking the section and inserting in lieu thereof the

1 following:

2 633.247 SETTING OFF ELECTIVE SHARE OF SURVIVING SPOUSE.

3 The share of the surviving spouse under section 633.236 may
4 be set off by the mutual consent of all parties in interest,
5 or by referees appointed by the court. An application to have
6 the share set off by referees shall be made by an interested
7 party in writing by filing with the clerk of court. A copy of
8 such application shall be sent to all interested parties.

9 Sec. 23. Section 633.248, Code 2005, is amended to read as
10 follows:

11 633.248 REFEREE -- NOTICE.

12 In the absence of mutual consent of all interested parties
13 to the appointment of referees, the court shall fix a time and
14 place for hearing upon such application and of the fact that
15 referees will be appointed if such application is granted, and
16 shall prescribe the time and manner of the service of notice
17 of the hearing.

18 Sec. 24. Section 633.252, Code 2005, is amended by
19 striking the section and inserting in lieu thereof the
20 following:

21 633.252 CONFIRMATION CONCLUSIVE -- POSSESSION.

22 An order confirming a report of the referee shall be
23 binding and conclusive unless appealed within thirty days and
24 the surviving spouse may bring an action to obtain possession
25 of any assets set apart to the surviving spouse. Such
26 elective share constitutes a judgment lien in favor of such
27 surviving spouse against the possessor of such assets.

28 Sec. 25. Section 633.264, Code 2005, is amended to read as
29 follows:

30 633.264 DISPOSAL OF PROPERTY BY WILL.

31 Subject to the rights of the surviving spouse to ~~elect to~~
32 ~~take against the will~~ an elective share as provided by section
33 633.236, any person of full age and sound mind may dispose by
34 will of all the person's property, except sufficient to pay
35 the debts and charges against the person's estate.

1 Sec. 26. Section 633.271, Code 2005, is amended to read as
2 follows:

3 633.271 EFFECT OF DIVORCE OR DISSOLUTION.

4 1. If after making a will the testator is divorced or the
5 testator's marriage is dissolved, all provisions in the will
6 in favor of the testator's spouse or of a relative of the
7 testator's spouse, including but not limited to dispositions,
8 appointments relating to of property, and nominations to serve
9 in any fiduciary or representative capacity, are thereby
10 revoked by the divorce or dissolution of marriage, unless the
11 will provides otherwise.

12 2. ~~In~~ Unless the will provides otherwise, in the event the
13 testator and spouse remarry each other, the provisions of the
14 will revoked by the divorce or dissolution of marriage shall
15 be reinstated unless otherwise revoked by the testator, except
16 for provisions in favor of a person who died prior to the
17 remarriage which shall not be reinstated.

18 3. For the purposes of this section, "relative of the
19 testator's spouse" means a person who is related to the
20 divorced testator's former spouse by blood, adoption, or
21 affinity, and who, subsequent to a divorce or dissolution of
22 marriage, ceased to be related to the testator by blood,
23 adoption, or affinity.

24 Sec. 27. Section 633.434, unnumbered paragraph 2, Code
25 2005, is amended to read as follows:

26 Upon the expiration of the later to occur of four months
27 after the date of the second publication of notice to
28 creditors or one month after the service of the notice by
29 ordinary mail upon all claimants whose identities are
30 reasonably ascertainable, at their last known addresses and
31 whose claims will not or may not be paid or otherwise
32 satisfied during administration, the personal representative
33 shall pay the debts and charges against the estate in
34 accordance with this probate code. If it appears at any time
35 that the estate is or may be insolvent, that there are

1 insufficient funds on hand, or that there is other good and
2 sufficient cause, the personal representative may report that
3 fact to the court and apply for any order that the personal
4 representative deems necessary.

5 Sec. 28. Section 633.477, subsection 10, Code 2005, is
6 amended to read as follows:

7 10. A statement as to whether or not all statutory
8 requirements pertaining to taxes have been complied with ~~and a~~
9 statement-as-to including whether the federal estate tax due
10 has been paid, and whether a lien continues to exist for any
11 federal estate tax, and whether inheritance tax was paid or a
12 return was filed in this state.

13 Sec. 29. Section 633.574, Code 2005, is amended to read as
14 follows:

15 633.574 PROCEDURE IN LIEU OF CONSERVATORSHIP.

16 If a conservator has not been appointed, money due a minor
17 or other property to which a minor is entitled, not exceeding
18 in the aggregate ~~ten~~ twenty-five thousand dollars in value,
19 shall be paid or delivered to a custodian under any uniform
20 transfers to minors Act. The written receipt of the custodian
21 constitutes an acquittance of the person making the payment of
22 money or delivery of property.

23 Sec. 30. Section 633.681, Code 2005, is amended to read as
24 follows:

25 633.681 ASSETS OF MINOR WARD EXHAUSTED.

26 When the assets of a minor ward's conservatorship are
27 exhausted or consist of personal property only of an aggregate
28 value not in excess of ~~ten~~ twenty-five thousand dollars, the
29 court, upon application or upon its own motion, may terminate
30 the conservatorship. The order for termination shall direct
31 the conservator to deliver any property remaining after the
32 payment of allowed claims and expenses of administration to a
33 custodian under any uniform transfers to minors Act. Such
34 delivery shall have the same force and effect as if delivery
35 had been made to the ward after attaining majority.

1 Sec. 31. Section 633.699, Code 2005, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 633.699 POWERS OF TRUSTEES.

5 Unless it is otherwise provided by the will creating a
6 testamentary trust, the instrument creating an express trust,
7 or by an order or decree duly entered by a court of competent
8 jurisdiction, a trustee shall have all the powers granted a
9 trustee under sections 633.4401 and 633.4402. Documents
10 incorporating by reference powers granted a trustee under the
11 probate code or under this section shall be interpreted
12 accordingly, even if the execution or adoption of the
13 instrument creating the trust occurred prior to July 1, 2005.

14 Sec. 32. NEW SECTION. 633.699B APPLICABILITY OF LAW.

15 The terms of this division, and all other terms of this
16 probate code relating to trusts and trustees, shall apply only
17 to trusts that remain under continuous court supervision
18 pursuant to section 633.10 and to trusts that have not been
19 released from such continuous supervision pursuant to section
20 633.10. Regarding all such trusts, the terms of this chapter
21 shall supersede any inconsistent terms in the trust code and
22 such trusts shall be governed by terms of the trust code that
23 are not inconsistent with this probate code.

24 Sec. 33. Section 633.705, Code 2005, is amended by adding
25 the following new subsections:

26 NEW SUBSECTION. 3. Receipt of the affidavit described in
27 subsection 2 by the holder of the principal's property
28 constitutes sufficient acquittance for the payment of money,
29 delivery of property, or transfer of a registered ownership of
30 property as directed by the attorney in fact or agent and
31 discharges the holder from further liability with respect to
32 the money or property, if the holder has taken reasonable
33 steps to verify the identity of the person acting as attorney
34 in fact or agent. The holder of the principal's property may
35 rely in good faith on the statements contained in the

1 affidavit and has no duty to inquire into the truth of any
2 statements in the affidavit.

3 NEW SUBSECTION. 4. If an attorney in fact or agent has
4 provided the affidavit described in subsection 2 and the
5 holder of the principal's property refuses to pay, deliver, or
6 transfer any property or evidence thereof within a reasonable
7 amount of time, the principal, acting through the attorney in
8 fact or agent, may recover the property or compel its payment,
9 delivery, or transfer in an action brought for that purpose
10 against the holder of the property.

11 a. If an action is brought against the holder under this
12 subsection and the court finds that the holder of the
13 principal's property acted unreasonably in refusing to pay,
14 deliver, or transfer the property as directed by the attorney
15 in fact, the court may award any or all of the following to
16 the principal:

17 (1) Damages sustained by the principal.

18 (2) Costs of the action.

19 (3) A penalty in an amount determined by the court, not
20 less than five hundred dollars or more than one thousand
21 dollars.

22 (4) Reasonable attorney fees, as determined by the court,
23 based on the value of the time reasonably expended by the
24 attorney and not by the amount of the recovery on behalf of
25 the principal.

26 b. No action shall be brought pursuant to this section
27 more than one year after the date of the occurrence of the
28 violation.

29 Sec. 34. Section 633.706, Code 2005, is amended by adding
30 the following new subsections:

31 NEW SUBSECTION. 4. Receipt, by the holder of the
32 principal's property, of the affidavit described in subsection
33 2 constitutes sufficient acquittance for the payment of money,
34 delivery of property, or transfer of the registered ownership
35 of property as directed by the attorney in fact or agent and

1 discharges the holder from any further liability to any person
2 with respect to the money or the property, if the holder has
3 taken reasonable steps to verify the identity of the person
4 acting as attorney in fact or agent. The holder of the
5 principal's property may rely in good faith on the statements
6 in the affidavit and has no duty to inquire into the truth of
7 any of the statements in the affidavit.

8 NEW SUBSECTION. 5. If an attorney in fact or agent has
9 provided the affidavit described in subsection 2 and the
10 holder of the principal's property refuses to pay, deliver, or
11 transfer any property or evidence thereof within a reasonable
12 amount of time, the principal, acting through the attorney in
13 fact may recover the property or compel its payment, delivery,
14 or transfer in an action brought for that purpose against the
15 holder of the property.

16 a. If an action is brought against the holder under this
17 subsection and the court finds that the holder of the
18 principal's property acted unreasonably in refusing to pay,
19 deliver, or transfer the property as directed by the attorney
20 in fact, the court may award any or all of the following to
21 the principal:

22 (1) Damages sustained by the principal.

23 (2) Costs of the action.

24 (3) A penalty in an amount determined by the court, not
25 less than five hundred dollars or more than one thousand
26 dollars.

27 (4) Reasonable attorney fees, as determined by the court,
28 based on the value of the time reasonably expended by the
29 attorney and not by the amount of the recovery on behalf of
30 the principal.

31 b. No action shall be brought pursuant to this section
32 more than one year after the date of the occurrence of the
33 violation.

34 Sec. 35. Section 633.1102, Code 2005, is amended by adding
35 the following new subsection:

1 NEW SUBSECTION. 0A. "Adjusted gross estate", as it
2 relates to a trust, means the same as defined in section
3 633.266.

4 Sec. 36. Section 633.1107, Code 2005, is amended to read
5 as follows:

6 633.1107 SCOPE OF TRUST CODE.

7 1. This Except as otherwise provided in subsection 2, this
8 trust code is-intended-to shall apply to trusts, as defined in
9 section 633.1102, ~~subsection-17,~~ that are intentionally
10 created, or deemed to be intentionally created, by individuals
11 and other entities.

12 2. With regard to trusts described in section 633.10, that
13 have not been judicially released from continuous court
14 supervision, this trust code shall apply only to the extent
15 not inconsistent with the relevant provisions of chapter 633.
16 With regard to all other trusts defined in section 633.1102,
17 the terms of chapter 633 shall be inapplicable, and the terms
18 of this trust code shall prevail over any inconsistent
19 provisions of Iowa law.

20 Sec. 37. Section 633.2208, Code 2005, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 3. By way of illustration and without
23 limitation, a trust may be divided pursuant to this section to
24 allow a trust to qualify as a marital deduction trust for tax
25 purposes, as a qualified subchapter S trust for federal income
26 tax purposes, as a separate trust for federal generation
27 skipping tax purposes, or for any other federal or state
28 income, estate, excise, or inheritance tax benefit, or to
29 facilitate the administration of a trust.

30 Sec. 38. Section 633.2301, subsection 4, unnumbered
31 paragraph 1, Code 2005, is amended to read as follows:

32 A creditor or assignee of a beneficiary of a spendthrift
33 trust ~~shall~~ may not compel a distribution that is subject to
34 the trustee's discretion ~~if-any-of-the-following-apply~~ despite
35 the fact that:

1 Sec. 39. Section 633.2303, Code 2005, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 3. The assets of an irrevocable trust
4 shall not become subject to the claims of creditors of the
5 settlor of a trust solely due to a provision in the trust that
6 allows a trustee of the trust to reimburse the settlor for
7 income taxes payable on the income of the trust. This
8 subsection shall not limit the rights of a creditor of the
9 settlor to assert a claim against the assets of the trust due
10 to the retention or grant of any rights to the settlor under
11 the trust instrument or any other beneficial interest of the
12 settlor other than as specifically set forth in this
13 subsection.

14 Sec. 40. Section 633.3107, Code 2005, is amended to read
15 as follows:

16 633.3107 EFFECT OF DIVORCE OR DISSOLUTION.

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

25 2. ~~In~~ Unless the trust instrument provides otherwise, in
26 the event the settlor and spouse remarry each other, the
27 provisions of the revocable trust revoked by the divorce or
28 dissolution of marriage shall be reinstated unless otherwise
29 modified by the settlor, except for provisions in favor of a
30 person who died prior to the remarriage which shall not be
31 reinstated.

32 For the purposes of this section, "relative of the
33 settlor's spouse" means a person who is related to the
34 divorced settlor's former spouse by blood, adoption, or
35 affinity, and who, subsequent to the divorce or dissolution of

1 marriage, ceased to be related to the settlor by blood,
2 adoption, or affinity.

3 Sec. 41. NEW SECTION. 633.3112 CLASSIFICATION OF DEBTS
4 AND CHARGES.

5 If a revocable trust becomes subject to the claims of a
6 settlor's creditors and the costs of administration of the
7 settlor's estate pursuant to section 633.3104, following the
8 payment of the proper costs of administration of the trust and
9 any claims against the trust, the debts and charges of the
10 settlor's estate payable by the trust shall be classified
11 pursuant to sections 633.425 and 633.426 as such sections
12 exist on the date of the settlor's death.

13 Sec. 42. Section 633.4701, Code 2005, is amended by adding
14 the following new subsection:

15 NEW SUBSECTION. 8A. For the purposes of this section, a
16 term of the trust requiring that a beneficiary survive a
17 person whose death does not make the beneficiary entitled to
18 possession or enjoyment of the beneficiary's interest in the
19 trust shall not be considered as "otherwise specifically
20 stated by the terms of the trust" nor as an "express condition
21 of survivorship imposed by the terms of the trust".

22 Sec. 43. Section 633.4701, subsection 9, Code 2005, is
23 amended to read as follows:

24 9. If an interest to which this section applies is given
25 to a class, other than a class described as "issue",
26 "descendants", "heirs of the body", "heirs", "next of kin",
27 "relatives", or "family", or a class described by language of
28 similar import, the members of the class who are living on the
29 date on which the class becomes entitled to possession or
30 enjoyment of the interest shall be considered as alternate
31 beneficiaries under this section. However, neither the
32 residuary beneficiaries under the settlor's will nor the
33 settlor's heirs shall be considered as alternate beneficiaries
34 for the purposes of this section.

35 Sec. 44. NEW SECTION. 633.4703 GENERAL ORDER FOR

1 ABATEMENT.

2 Except as otherwise provided by the governing instrument,
3 where necessary to abate shares of the beneficiaries of a
4 trust for the payment of debts and charges, federal and state
5 estate taxes, bequests, and the shares of children born or
6 adopted after the execution of the trust, abatement shall
7 occur in the following order:

8 1. Shares allocated to the residuary beneficiaries of the
9 trust shall be abated first, on a pro rata basis.

10 2. Shares defined by a dollar amount, on a pro rata basis.

11 3. Shares described as specific items of property whether
12 tangible or intangible shall be abated last, and such
13 abatement shall be done as equitably by the trustee among the
14 various beneficiaries as circumstances reasonably allow.

15 4. Notwithstanding subsections 1, 2, or 3, a disposition
16 in favor of the grantor's surviving spouse shall not be abated
17 where such abatement would have the effect of increasing the
18 amount of federal estate or federal gift taxes payable by a
19 person or an entity.

20 Sec. 45. NEW SECTION. 633.4704 SIMULTANEOUS DEATH.

21 If the determination of the successor of a beneficial
22 interest in a trust is dependent upon whether a beneficiary
23 has survived the death of a settlor, of another beneficiary,
24 or of any other person, the uniform simultaneous death Act,
25 sections 633.523 through 633.528, shall govern the
26 determination of who shall be considered to have died first.

27 Sec. 46. NEW SECTION. 633.4705 PRINCIPAL AND INCOME.

28 Chapter 637 shall apply to trusts subject to this chapter.

29 Sec. 47. NEW SECTION. 633.4706 SMALL DISTRIBUTIONS TO
30 MINORS -- PAYMENT.

31 When a minor becomes entitled under the terms of the trust
32 to a beneficial interest in the trust upon the distribution of
33 the trust fund and the value of the interest does not exceed
34 the sum of twenty-five thousand dollars, the trustee may pay
35 the interest to a custodian under any uniform transfers to

1 minors Act. Receipt by the custodian shall have the same
2 force and effect as though payment had been made to a duly
3 appointed and qualified conservator for the minor.

4 Sec. 48. NEW SECTION. 633.5105 CHARITABLE TRUSTS.

5 In addition to the provisions of this chapter, a charitable
6 trust that is a private foundation shall be governed by the
7 provisions of chapter 634.

8 Sec. 49. Section 633.6101, Code 2005, is amended to read
9 as follows:

10 633.6101 SUBJECT MATTER JURISDICTION.

11 The district court sitting in probate has exclusive
12 jurisdiction of proceedings concerning the internal affairs of
13 a trust and of actions and proceedings to determine the
14 existence of a trust, actions and proceedings by or against
15 creditors or debtors of a trust, and other actions and
16 proceedings involving a trust and third persons. Such
17 jurisdiction may be invoked by any interested party at any
18 time.

19 Sec. 50. Sections 633.28, 633.699A, 633.703A, 633.703B,
20 633.7101, 636.60, 636.60A, 636.61, Code 2005, are repealed.

21 Sec. 51. Sections 633.2; 633.3, unnumbered paragraph 1;
22 633.3, subsections 7 and 20; 633.22, subsection 4; 633.34;
23 633.38; 633.40, subsection 1; 633.44; 633.46; 633.47; 633.71;
24 633.88; 633.118; 633.160; 633.162; 633.350; 633.365; 633.389;

* 25 633.433; 633.500; 633.502; 633.597; 633.633; 633.633A; and
26 633.652, Code 2005, are amended by striking from the
27 applicable section, paragraph, or subsection the word "Code"
28 and inserting in lieu thereof the following: "probate code".

29 Sec. 52. CODE EDITOR DIRECTIVE. Sections 633.707,
30 unnumbered paragraph 1; 633.711, subsection 2; 633.800;
31 633.801, unnumbered paragraph 1; 633.803; 633.807, subsections
32 2 and 7; 633.808; 633.809; 633.810; 633.901; 633.902,
33 unnumbered paragraph 1; 633.903; 633.904; 633.905, subsection
34 6; 633.913, subsections 5 and 6; 633.914; 633.915; 633.916;
35 633.917; 633.1101; 633.1102, unnumbered paragraph 1; and

1 633.1104; Code 2005, are amended by striking from the
2 applicable section, paragraph, or subsection the word
3 "division" and inserting in lieu thereof the following:
4 "chapter".

5 Sec. 53. CODE EDITOR DIRECTIVE. The Code editor is
6 directed to transfer from chapter 633, division XVII (sections
7 633.705 and 633.706), division XVIII (633.707 through
8 633.711), division XIX (633.800 through 633.811), and division
9 XX (633.901 through 633.917), as amended in this Act, to new
10 chapters 633B, 633C, 633D, and 633E, respectively.

11 Sec. 54. CODE EDITOR DIRECTIVE. The Code editor is
12 directed to transfer from chapter 633, sections 633.1101
13 through 633.1108, 633.2101 through 633.2107, 633.2201 through
14 633.2208, 633.2301 through 633.2303, 633.3101 through
15 633.3111, 633.4101 through 633.4111, 633.4201 through
16 633.4214, 633.4301 through 633.4309, 633.4401 and 633.4402,
17 633.4501 through 633.4507, 633.4601 through 633.4605, 633.4701
18 and 633.4702, 633.5101 through 633.5104, 633.6101 through
19 633.6105, 633.6201 and 633.6202, and 633.6301 through
20 633.6308, as amended in this Act, to new chapter 633A and to
21 retain the same section number designations.

22 Sec. 55. CODE EDITOR DIRECTIVE. The Code editor is
23 directed to correct internal references in the Code as
24 necessary due to the enactment of this Act.

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SENATE FILE 379

H-1204

- 1 Amend Senate File 379, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 6, line 12, by striking the word
4 "decedent" and inserting the following: "decedent,".
5 2. Page 6, line 13, by striking the word
6 "intestacy" and inserting the following: "intestacy,".
7 3. Page 10, by striking line 15 and inserting the
8 following: "be reinstated unless otherwise revoked by
9 the testator, except".
10 4. By renumbering as necessary.

By PAULSEN of Linn
SWAIM of Davis

H-1204 FILED MARCH 29, 2005

**HOUSE AMENDMENT TO
SENATE FILE 379**

S-3076

- 1 Amend Senate File 379, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 6, line 12, by striking the word
4 "decedent" and inserting the following: "decedent,".
5 2. Page 6, line 13, by striking the word
6 "intestacy" and inserting the following: "intestacy,".
7 3. Page 10, by striking line 15 and inserting the
8 following: "be reinstated unless otherwise revoked by
9 the testator, except".
10 4. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-3076 FILED APRIL 4, 2005

Warnstadt co-chair
Ward
Hancock
Miller

co-chair

Succeeded By
JF/HF 379

SSB# 1251

Judiciary

SENATE FILE _____

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CO-CHAIRPERSONS KREIMAN
AND MILLER)

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, the Iowa trust code,
2 and certain other trusts.

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

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TLSB 1076SC 81

rh/sh/8

1 Section 1. Section 249A.3, subsection 11, paragraph d,
2 Code 2005, is amended to read as follows:

3 d. Failure of a surviving spouse to take ~~against-a-will~~ an
4 elective share pursuant to chapter 633, division V,
5 constitutes a transfer of assets for the purpose of
6 determining eligibility for medical assistance to the extent
7 that the value received by taking ~~against-the-will~~ an elective
8 share would have exceeded the value of the inheritance
9 received under the will.

10 Sec. 2. Section 633.3, subsection 15, Code 2005, is
11 amended by striking the subsection and inserting in lieu
12 thereof the following:

13 15. ESTATE -- the real and personal property of either a
14 decedent or a ward, and may also refer to the real and
15 personal property of a trust as defined in section 633.10.

16 Sec. 3. Section 633.3, subsection 17, Code 2005, is
17 amended to read as follows:

18 17. FIDUCIARY -- includes personal representative,
19 executor, administrator, guardian, conservator, and the
20 trustee of any trust as defined in section 633.10.

21 Sec. 4. Section 633.3, subsection 34, Code 2005, is
22 amended to read as follows:

23 34. TRUSTEE -- the person or persons ~~appointed-as-trustee~~
24 ~~by-the-instrument-creating-the-trust,-or-the-person-or-persons~~
25 ~~appointed-by-the-court-to-administer-the-trust~~ servng as
26 trustee of a trust as defined in section 633.10.

27 Sec. 5. Section 633.3, subsection 35, Code 2005, is
28 amended by striking the subsection and inserting in lieu
29 thereof the following:

30 35. TRUSTS -- includes only those trusts defined in
31 section 633.10.

32 Sec. 6. Section 633.10, unnumbered paragraph 1, Code 2005,
33 is amended to read as follows:

34 The In addition to the jurisdiction granted the district
35 court under the trust code or elsewhere, the district court

1 sitting in probate shall have jurisdiction of:

2 Sec. 7. Section 633.10, subsection 2, Code 2005, is
3 amended to read as follows:

4 2. CONSTRUCTION OF WILLS ~~AND TRUST INSTRUMENTS~~.

5 The construction of wills ~~and trust instruments~~ during the
6 administration of the estate ~~or trust~~, whether said
7 construction be incident to such administration, or as a
8 separate proceeding.

9 Sec. 8. Section 633.10, subsection 4, Code 2005, is
10 amended by striking the subsection and inserting in lieu
11 thereof the following:

12 4. TRUSTS AND TRUSTEES.

13 a. The ongoing administration and supervision, including
14 but not limited to the appointment of trustees, the granting
15 of letters of trusteeship, trust administration, and trust
16 settlement and closing, of the following trusts:

17 (1) A trust that was in existence on July 1, 2005, and
18 that is subject to continuous court supervision.

19 (2) A trust established by court decree that is subject to
20 continuous court supervision.

21 b. A trust described in paragraph "a" shall be governed by
22 this chapter and the provisions of chapter 633A which are not
23 inconsistent with the provisions of this chapter.

24 c. A trust not described in paragraph "a" shall be
25 governed exclusively by chapter 633A and shall be subject to
26 the jurisdiction of the district court sitting in probate as
27 provided in section 633.6101.

28 d. Upon joint application by the trustee administering a
29 trust described in paragraph "a" and following notice to the
30 beneficiaries pursuant to section 633.40, the court shall
31 release the trust from further jurisdiction unless a
32 beneficiary objects. The court whose decree created the trust
33 may release the trust from continuous court supervision
34 following notice to the beneficiary pursuant to section
35 633.40. If such judicial release occurs for a trust

1 previously governed by this chapter, such trust shall be
2 governed by chapter 633A and the district court sitting in
3 probate as provided in section 633.6101.

4 Sec. 9. Section 633.27, subsection 4, Code 2005, is
5 amended to read as follows:

6 4. The title of each trust ~~where-letters-of-trusteeship~~
7 are-issued described in section 633.10 that has not been
8 released by the court from continuous court supervision.

9 Sec. 10. Section 633.108, Code 2005, is amended to read as
10 follows:

11 633.108 SMALL DISTRIBUTIONS TO MINORS -- PAYMENT.

12 Whenever a minor becomes entitled under the terms of a will
13 to a bequest or legacy, or to a share of the estate of an
14 intestate, ~~or-to-a-beneficial-interest-in-a-trust-fund-upon~~
15 ~~the-distribution-of-the-trust-fund,~~ and the value of the
16 bequest, legacy, or share~~7-or-interest~~ does not exceed the sum
17 of ~~ten~~ twenty-five thousand dollars, the personal
18 representative ~~or-trustee~~ may pay the bequest, legacy, or
19 share~~7-or-interest~~ to a custodian under any uniform transfers
20 to minors Act. Receipt by the custodian, when presented to
21 the court or filed with the report of distribution of the
22 fiduciary, shall have the same force and effect as though the
23 payment had been made to a duly appointed and qualified
24 conservator for the minor.

25 Sec. 11. Section 633.236, Code 2005, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 633.236 RIGHT OF ELECTIVE SHARE OF SURVIVING SPOUSE.

29 When a married person domiciled in Iowa at the time of
30 death dies, the surviving spouse shall have the right to take
31 an elective share under the provisions of sections 633.237
32 through 633.246. If the surviving spouse has a conservator,
33 the court may authorize or direct the conservator to elect the
34 share as the court deems appropriate under the circumstances.

35 Sec. 12. Section 633.237, Code 2005, is amended by

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

3 633.237 PRESUMPTION AGAINST FILING ELECTIVE SHARE.

4 1. Following the appointment of a personal representative
5 of the estate of the decedent, who is not the spouse, the
6 personal representative shall cause to be served a written
7 notice upon the surviving spouse pursuant to section 633.40,
8 subsection 5, notifying the surviving spouse that unless,
9 within four months after service of the notice, the spouse
10 files an election in writing with the clerk of court electing
11 the share as set forth in section 633.236, and sections
12 633.238 through 633.246, the spouse shall be deemed to take
13 under the will or to receive the intestate share. If, within
14 the four-month period following service of the notice, an
15 affidavit is filed setting forth that the surviving spouse is
16 incapable of making the election and does not have a
17 conservator, the personal representative shall make
18 application to the court for an order pursuant to section
19 633.244.

20 2. Following the death of a settler of a revocable trust,
21 the trustee of such revocable trust who is not the spouse
22 shall cause to be served a written notice upon the surviving
23 spouse pursuant to section 633.40, subsection 5, notifying the
24 surviving spouse that unless, within four months after service
25 of the notice, the spouse files an election with the trustee
26 electing the share as set forth in section 633.236, and
27 sections 633.238 through 633.246, the spouse shall be deemed
28 to take under the terms of the revocable trust. If, within
29 the four-month period following service of the notice, an
30 affidavit is filed setting forth that the surviving spouse is
31 incapable of making the election and does not have a
32 conservator, the trustee shall make application to the court
33 for an order pursuant to section 633.244.

34 3. If the surviving spouse has a conservator, notice shall
35 be given to the conservator and the spouse pursuant to

1 subsections 1 and 2.

2 4. The notice provisions under subsections 1 and 2 are not
3 applicable if the surviving spouse is a personal
4 representative of the estate or a trustee of a revocable
5 trust. If the surviving spouse fails to file an election
6 under this section within four months of the decedent's death,
7 it shall be conclusively presumed that the surviving spouse
8 elects to take under the will, receive the intestate share, or
9 take under the revocable trust.

10 5. Upon application of the surviving spouse or conservator
11 filed before the time for making the election expires, the
12 court may extend the period in which the surviving spouse may
13 make the election.

14 Sec. 13. Section 633.238, Code 2005, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 633.238 ELECTIVE SHARE OF SURVIVING SPOUSE.

18 1. The elective share of the surviving spouse shall be all
19 of the following:

20 a. One-third in value of all the legal or equitable
21 estates in real property possessed by the decedent at any time
22 during the marriage which have not been sold on execution or
23 other judicial sale, and to which the surviving spouse has
24 made no expressed written relinquishment of right.

25 b. All personal property that, at the time of death, was
26 in the hands of the decedent as the head of a family, exempt
27 from execution.

28 c. One-third of all personal property of the decedent that
29 is not necessary for the payment of debts and charges.

30 d. One-third in value of the property held in trust not
31 necessary for the payment of debts and charges over which the
32 decedent was a grantor and retained at the time of death the
33 power to alter, amend, or revoke the trust, or over which the
34 decedent waived or rescinded any such power within one year of
35 the date of death, and to which the surviving spouse has not

1 made any express written relinquishment.

2 2. The elective share described in this section shall be
3 in lieu of any property the spouse would otherwise receive
4 under the last will and testament of the decedent in testacy
5 or under the terms of a revocable trust.

6 Sec. 14. Section 633.239, Code 2005, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 633.239 SHARE TO EMBRACE HOMESTEAD.

10 The share of the surviving spouse in such real estate shall
11 be set off in such manner as to include the homestead, or so
12 much thereof as will be equal to the share allotted to the
13 spouse pursuant to section 633.238 unless the spouse prefers a
14 different arrangement, but no such different arrangement shall
15 be allowed unless there is sufficient property remaining to
16 pay the claims and charges against the decedent's estate.

17 Sec. 15. Section 633.240, Code 2005, is amended by
18 striking the section and inserting in lieu thereof the
19 following:

20 633.240 ELECTION TO RECEIVE HOMESTEAD.

21 In estates in which the surviving spouse has filed an
22 elective share and in all intestate estates, whether an
23 election is filed or not, the surviving spouse or the spouse's
24 conservator, if applicable, may, in lieu of the spouse's share
25 in the real property possessed by the decedent at any time
26 during the marriage, which has not been sold on execution or
27 other judicial sale, and to which the surviving spouse has
28 made no express written relinquishment of right, elect to
29 receive a life estate in the homestead. Such election shall
30 be made and entered of record as provided in section 633.245.
31 In making such election, the surviving spouse shall have all
32 the rights as to the personal property provided in section
33 633.238, subsection 1, paragraphs "b", "c", and "d". In case
34 of failure to make such election, the right to receive the
35 life estate in the homestead shall be waived.

1 Sec. 16. Section 633.241, Code 2005, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 633.241 TIME FOR ELECTION TO RECEIVE LIFE ESTATE IN
5 HOMESTEAD.

6 If the surviving spouse does not make an election to
7 receive the life estate in the homestead and file it with the
8 clerk within four months from the date of second publication
9 of notice to creditors, it shall be conclusively presumed that
10 the surviving spouse waives the right to make the election.
11 The court on application may, prior to the expiration of the
12 period of four months, for cause shown, enter an order
13 extending the time for making the election.

14 Sec. 17. Section 633.242, Code 2005, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 633.242 RIGHTS OF ELECTION PERSONAL TO SURVIVING SPOUSE.

18 The right of the surviving spouse to take an elective
19 share, and the right of the surviving spouse to receive a life
20 estate in the homestead, are personal. They are not
21 transferable and cannot be exercised for the spouse subsequent
22 to the spouse's death. If the surviving spouse dies prior to
23 filing an elective share, it shall be conclusively presumed
24 that the surviving spouse does not take such elective share.

25 Sec. 18. Section 633.243, Code 2005, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 633.243 FILING ELECTIONS.

29 The filing of the elective share and the election to
30 receive a life estate in the homestead shall be filed in the
31 office of the clerk in which the decedent's estate is being
32 administered and served on the trustee of the revocable trust.
33 The court where the election is filed shall have exclusive
34 jurisdiction over all matters regarding elections under this
35 chapter.

1 Sec. 19. Section 633.244, Code 2005, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 633.244 INCOMPETENT SPOUSE -- ELECTION BY COURT.

5 In case an affidavit is filed that the surviving spouse is
6 incapable of determining whether to take the elective share,
7 or to elect to receive a life estate in the homestead, and
8 does not have a conservator, the court shall fix a time and
9 place of hearing on the matter and cause a notice thereof to
10 be served upon the surviving spouse in such manner and for
11 such time as the court may direct. At the hearing, a guardian
12 ad litem shall be appointed to represent the spouse and the
13 court shall enter such orders as it deems appropriate under
14 the circumstances. The guardian ad litem shall be a
15 practicing attorney.

16 Sec. 20. Section 633.246A, Code 2005, is amended by
17 striking the section and inserting in lieu thereof the
18 following:

19 633.246A MEDICAL ASSISTANCE ELIGIBILITY.

20 Failure of a surviving spouse to make an election under
21 this division constitutes a transfer of assets for the purpose
22 of determining eligibility for medical assistance pursuant to
23 chapter 249A to the extent that the value received by making
24 the election would have exceeded the value of property
25 received absent the election.

26 Sec. 21. Section 633.247, Code 2005, is amended by
27 striking the section and inserting in lieu thereof the
28 following:

29 633.247 SETTING OFF ELECTIVE SHARE OF SURVIVING SPOUSE.

30 The share of the surviving spouse under section 633.236 may
31 be set off by the mutual consent of all parties in interest,
32 or by referees appointed by the court. An application to have
33 the share set off by referees shall be made by an interested
34 party in writing by filing with the clerk of court. A copy of
35 such application shall be sent to all interested parties.

1 Sec. 22. Section 633.252, Code 2005, is amended by
2 striking the section and inserting in lieu thereof the
3 following:

4 633.252 CONFIRMATION CONCLUSIVE -- POSSESSION.

5 An order confirming a report of the referee shall be
6 binding and conclusive unless appealed within thirty days and
7 the surviving spouse may bring an action to obtain possession
8 of any assets set apart to the surviving spouse. Such
9 elective share constitutes a judgment lien in favor of such
10 surviving spouse against the possessor of such assets.

11 Sec. 23. Section 633.264, Code 2005, is amended to read as
12 follows:

13 633.264 DISPOSAL OF PROPERTY BY WILL.

14 Subject to the rights of the surviving spouse to elect to
15 take ~~against the will~~ an elective share as provided by section
16 633.236, any person of full age and sound mind may dispose by
17 will of all the person's property, except sufficient to pay
18 the debts and charges against the person's estate.

19 Sec. 24. Section 633.271, Code 2005, is amended to read as
20 follows:

21 633.271 EFFECT OF DIVORCE OR DISSOLUTION.

22 1. If after making a will the testator is divorced or the
23 marriage is dissolved, all provisions in the will in favor of
24 the testator's spouse or of a relative of the testator's
25 spouse, including but not limited to dispositions,
26 appointments relating to property, and nominations to serve in
27 any fiduciary or representative capacity, are thereby revoked
28 unless the will provides otherwise.

29 2. ~~In~~ Unless the will provides otherwise, in the event the
30 testator and spouse remarry each other, the provisions of the
31 will revoked by the divorce or dissolution of marriage shall
32 be reinstated unless otherwise revoked by the testator. This
33 subsection shall not apply to provisions of the will that are
34 in favor of a person who died prior to remarriage.

35 3. For the purposes of this section, "relative of the

1 testator's spouse" means a person who is related to the
2 divorced testator's former spouse by blood, adoption, or
3 affinity, and who, subsequent to a divorce or annulment,
4 ceased to be related to the testator by blood, adoption, or
5 annulment.

6 Sec. 25. Section 633.477, subsection 10, Code 2005, is
7 amended to read as follows:

8 10. A statement as to whether or not all statutory
9 requirements pertaining to taxes have been complied with ~~and a~~
10 ~~statement-as-to~~ including whether the federal estate tax due
11 has been paid, ~~and~~ whether a lien continues to exist for any
12 federal estate tax, and whether inheritance tax was paid or a
13 return was filed in this state.

14 Sec. 26. Section 633.574, Code 2005, is amended to read as
15 follows:

16 633.574 PROCEDURE IN LIEU OF CONSERVATORSHIP.

17 If a conservator has not been appointed, money due a minor
18 or other property to which a minor is entitled, not exceeding
19 in the aggregate ~~ten~~ twenty-five thousand dollars in value,
20 shall be paid or delivered to a custodian under any uniform
21 transfers to minors Act. The written receipt of the custodian
22 constitutes an acquittance of the person making the payment of
23 money or delivery of property.

24 Sec. 27. Section 633.681, Code 2005, is amended to read as
25 follows:

26 633.681 ASSETS OF MINOR WARD EXHAUSTED.

27 When the assets of a minor ward's conservatorship are
28 exhausted or consist of personal property only of an aggregate
29 value not in excess of ~~ten~~ twenty-five thousand dollars, the
30 court, upon application or upon its own motion, may terminate
31 the conservatorship. The order for termination shall direct
32 the conservator to deliver any property remaining after the
33 payment of allowed claims and expenses of administration to a
34 custodian under any uniform transfers to minors Act. Such
35 delivery shall have the same force and effect as if delivery

1 had been made to the ward after attaining majority.

2 Sec. 28. Section 633.699, Code 2005, is amended by
3 striking the section and inserting in lieu thereof the
4 following:

5 633.699 POWERS OF TRUSTEES.

6 Unless it is otherwise provided by the will creating a
7 testamentary trust, the instrument creating an express trust,
8 or by an order or decree duly entered by a court of competent
9 jurisdiction, a trustee shall have all the powers granted a
10 trustee under sections 633.4401 and 633.4402. Documents
11 incorporating by reference powers granted a trustee under the
12 probate code or under this section shall be interpreted
13 accordingly, even if the execution or adoption of the
14 instrument creating the trust occurred prior to July 1, 2005.

15 Sec. 29. NEW SECTION. 633.699B APPLICABILITY OF LAW.

16 The terms of this division, similar to other terms of this
17 probate code relating to trusts and trustees, shall apply only
18 to trusts that remain under continuous court supervision
19 pursuant to section 633.10 and to trusts that have not been
20 released from such continuous supervision pursuant to section
21 633.10. Regarding all such trusts, the terms of this chapter
22 shall supersede any inconsistent terms in the trust code and
23 such trusts shall be governed by terms of the trust code that
24 are not inconsistent with this probate code.

25 Sec. 30. Section 633.705, Code 2005, is amended by adding
26 the following new subsections:

27 NEW SUBSECTION. 3. Receipt of the affidavit described in
28 subsection 2 by the holder of the principal's property
29 constitutes sufficient acquittance for the payment of money,
30 delivery of property, or transfer of a registered ownership of
31 property as directed by the attorney in fact or agent and
32 discharges the holder from further liability with respect to
33 the money or property. The holder of the principal's property
34 may rely in good faith on the statements contained in the
35 affidavit and has no duty to inquire into the truth of any

1 statements in the affidavit.

2 NEW SUBSECTION. 4. If an attorney in fact or agent has
3 provided the affidavit described in subsection 2 and the
4 holder of the principal's property refuses to pay, deliver, or
5 transfer property or evidence thereof within a reasonable
6 amount of time, the principal, acting through the attorney in
7 fact or agent, may recover the property or compel its payment,
8 delivery, or transfer in an action brought for that purpose
9 against the holder of the property.

10 a. If an action is brought against the holder under this
11 subsection and the court finds that the holder of the
12 principal's property acted unreasonably in refusing to pay,
13 deliver, or transfer the property as directed by the attorney
14 in fact, the court may award any or all of the following:

15 (1) Damages sustained by the principal.

16 (2) Costs of the action.

17 (3) A penalty in an amount determined by the court, not
18 less than five hundred dollars or more than one thousand
19 dollars.

20 (4) Reasonable attorney fees, as determined by the court,
21 based on the value of the time reasonably expended by the
22 attorney and not by the amount of the recovery on behalf of
23 the principal.

24 b. An action shall not be commenced more than one year
25 after the date of the occurrence of the violation.

26 Sec. 31. Section 633.706, Code 2005, is amended by adding
27 the following new subsections:

28 NEW SUBSECTION. 4. Receipt, by the holder of the
29 principal's property, of the affidavit described in subsection
30 2 constitutes sufficient acquittance for the payment of money,
31 delivery of property, or transfer of the registered ownership
32 of property as directed by the attorney in fact and discharges
33 the holder from any further liability to any person with
34 respect to the money or the property. The holder of the
35 principal's property may rely in good faith on the statements

1 in the affidavit and has no duty to inquire into the truth of
2 any of the statements in the affidavit.

3 NEW SUBSECTION. 5. If an attorney in fact has provided
4 the affidavit described in subsection 2 and the holder of the
5 principal's property refuses to pay, deliver, or transfer any
6 property or evidence thereof within a reasonable amount of
7 time, the principal, acting through the attorney in fact may
8 recover the property or compel its payment, delivery, or
9 transfer in an action brought for that purpose against the
10 holder of the property.

11 a. If an action is brought against the holder under this
12 subsection and the court finds that the holder of the
13 principal's property acted unreasonably in refusing to pay,
14 deliver, or transfer the property as directed by the attorney
15 in fact, the court may award any or all of the following:

16 (1) Damages sustained by the principal.

17 (2) Costs of the action.

18 (3) A penalty in an amount determined by the court, not
19 less than five hundred dollars or more than one thousand
20 dollars.

21 (4) Reasonable attorney fees, as determined by the court,
22 based on the value of the time reasonably expended by the
23 attorney and not by the amount of the recovery on behalf of
24 the principal.

25 b. An action shall not be commenced more than one year
26 after the date of the occurrence of the violation.

27 Sec. 32. Section 633.1102, Code 2005, is amended by adding
28 the following new subsection:

29 NEW SUBSECTION. 0A. "Adjusted gross estate", as it
30 relates to a trust, means the same as defined in section
31 633.266.

32 Sec. 33. Section 633.1107, Code 2005, is amended to read
33 as follows:

34 633.1107 SCOPE OF TRUST CODE.

35 1. This Except as otherwise provided in subsection 2, this

1 trust code ~~is-intended-to~~ shall apply to trusts, as defined in
2 section 633.1102, ~~subsection-17,~~ that are intentionally
3 created, or deemed to be intentionally created, by individuals
4 and other entities.

5 2. With regard to trusts described in section 633.10, that
6 have not been judicially released from continuous court
7 supervision, this trust code shall apply only to the extent
8 not inconsistent with the relevant provisions of chapter 633.
9 With regard to all other trusts defined in section 633.1102,
10 the terms of chapter 633 shall be inapplicable, and the terms
11 of this trust code shall prevail over any inconsistent
12 provisions of Iowa law.

13 Sec. 34. Section 633.2208, Code 2005, is amended by adding
14 the following new subsection:

15 NEW SUBSECTION. 3. A trust may be divided pursuant to
16 this section to allow a trust to qualify as a marital
17 deduction trust for tax purposes, as a qualified subchapter S
18 trust for federal income tax purposes, as a separate trust for
19 federal generation skipping tax purposes, or for any other
20 federal or state income, estate, excise, or inheritance tax
21 benefit, or to facilitate the administration of a trust.

22 Sec. 35. Section 633.2301, subsection 4, unnumbered
23 paragraph 1, Code 2005, is amended to read as follows:

24 A creditor or assignee of a beneficiary of a spendthrift
25 trust ~~shall~~ may not compel a distribution that is subject to
26 the trustee's discretion ~~if-any-of-the-following-apply~~ despite
27 the fact that:

28 Sec. 36. Section 633.2303, Code 2005, is amended by adding
29 the following new subsection:

30 NEW SUBSECTION. 3. The assets of an irrevocable trust
31 shall not become subject to the claims of creditors of the
32 settlor of the trust due to a provision in the trust that
33 allows a trustee of the trust to reimburse the settlor for
34 income taxes payable by the settlor on the income of the
35 trust. This subsection shall not limit the rights of a

1 creditor of the settlor to assert a claim against the assets
2 of the trust due to the retention or grant of any rights to
3 the settlor under the trust instrument or any other beneficial
4 interest of the settlor other than as specifically set forth
5 in this subsection.

6 Sec. 37. Section 633.3107, Code 2005, is amended to read
7 as follows:

8 633.3107 EFFECT OF DIVORCE OR DISSOLUTION.

9 1. If, after executing a revocable trust, the settlor is
10 divorced or the settlor's marriage is dissolved, all
11 provisions in the trust in favor of the settlor's spouse or of
12 a relative of the settlor's spouse, including, but not limited
13 to, dispositions, appointments of property, and nominations to
14 serve in any fiduciary or representative capacity are revoked
15 by divorce or dissolution of marriage unless the trust
16 instrument provides otherwise.

17 2. ~~In~~ Unless the trust instrument provides otherwise, in
18 the event the settlor and spouse remarry each other, the
19 provisions of the revocable trust revoked by the divorce or
20 dissolution of marriage shall be reinstated unless otherwise
21 modified by the settlor, except for provisions in favor of a
22 person who died prior to the remarriage which shall not be
23 reinstated.

24 For the purposes of this section, "relative of the
25 settlor's spouse" means a person who is related to the
26 divorced settlor's former spouse by blood, adoption, or
27 affinity, or who subsequent to the divorce or annulment ceased
28 to be related to the settlor by blood, adoption, or affinity.

29 Sec. 38. NEW SECTION. 633.3112 CLASSIFICATION OF DEBTS
30 AND CHARGES.

31 If a revocable trust becomes subject to the claims of a
32 settlor's creditors and the costs of administration of the
33 settlor's estate pursuant to section 633.3104, upon payment of
34 the proper costs of administration of the trust and any claims
35 against the trust, the debts and charges of the settlor's

1 estate payable by the trust shall be classified pursuant to
2 sections 633.425 and 633.426 if in existence on the date of
3 the settlor's death.

4 Sec. 39. Section 633.4701, Code 2005, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 8A. For the purposes of this section, a
7 term of the trust requiring that a beneficiary survive a
8 person whose death does not make the beneficiary entitled to
9 possession or enjoyment of the beneficiary's interest in the
10 trust shall not be considered as "otherwise specifically
11 stated by the terms of the trust" nor as an "express condition
12 of survivorship imposed by the terms of the trust".

13 Sec. 40. Section 633.4701, subsection 9, Code 2005, is
14 amended to read as follows:

15 9. If an interest to which this section applies is given
16 to a class, other than a class described as "issue",
17 "descendants", "heirs of the body", "heirs", "next of kin",
18 "relatives", or "family", or a class described by language of
19 similar import, the members of the class who are living on the
20 date on which the class becomes entitled to possession or
21 enjoyment of the interest shall be considered as alternate
22 beneficiaries under this section. However, neither the
23 residuary beneficiaries under the settlor's will nor the
24 settlor's heirs shall be considered as alternate beneficiaries
25 for the purposes of this section.

26 Sec. 41. NEW SECTION. 633.4703 GENERAL ORDER FOR
27 ABATEMENT.

28 Except as otherwise provided by the governing instrument,
29 where necessary to abate shares of the beneficiaries of a
30 trust for the payment of debts and charges, federal and state
31 estate taxes, bequests, and the shares of children born or
32 adopted after the execution of the trust, abatement shall
33 occur in the following order:

34 1. Shares allocated to the residuary beneficiaries of the
35 trust shall be abated first, on a pro rata basis.

1 2. Shares defined by a dollar amount, on a pro rata basis.

2 3. Shares described as specific items of property whether
3 tangible or intangible shall be abated last, and such
4 abatement shall be done as equitably by the trustee among the
5 various beneficiaries as circumstances reasonably allow.

6 4. Notwithstanding subsections 1, 2, or 3, a disposition
7 in favor of the grantor's surviving spouse shall not be abated
8 where such abatement would have the effect of increasing the
9 amount of federal estate or federal gift taxes payable by a
10 person or an entity.

11 Sec. 42. NEW SECTION. 633.4704 SIMULTANEOUS DEATH.

12 If the determination of the successor of a beneficial
13 interest in a trust is dependent upon whether a beneficiary
14 has survived the death of a settlor, of another beneficiary,
15 or of any other person, the uniform simultaneous death Act,
16 sections 633.523 through 633.528, shall govern the
17 determination of who shall be considered to have died first.

18 Sec. 43. NEW SECTION. 633.4705 PRINCIPAL AND INCOME.

19 Chapter 637 shall apply to trusts subject to this chapter.

20 Sec. 44. NEW SECTION. 633.4706 SMALL DISTRIBUTIONS TO
21 MINORS -- PAYMENT.

22 When a minor becomes entitled under the terms of the trust
23 to a beneficial interest in the trust upon the distribution of
24 the trust fund and the value of the interest does not exceed
25 the sum of twenty-five thousand dollars, the trustee may pay
26 the interest to a custodian under any uniform transfers to
27 minors Act. Receipt by the custodian shall have the same
28 force and effect as though payment had been made to a duly
29 appointed and qualified conservator for the minor.

30 Sec. 45. NEW SECTION. 633.5105 CHARITABLE TRUSTS.

31 A charitable trust that is a private foundation shall be
32 governed by the provisions of chapter 634.

33 Sec. 46. Section 633.6101, Code 2005, is amended to read
34 as follows:

35 633.6101 SUBJECT MATTER JURISDICTION.

1 The district court sitting in probate has exclusive
2 jurisdiction of proceedings concerning the internal affairs of
3 a trust and of actions and proceedings to determine the
4 existence of a trust, actions and proceedings by or against
5 creditors or debtors of a trust, and other actions and
6 proceedings involving a trust and third persons. Such
7 jurisdiction may be invoked by any interested party at any
8 time.

9 Sec. 47. Sections 633.28, 633.699A, 633.703A, 633.703B,
10 633.7101, 636.60, 636.60A, 636.61, Code 2005, are repealed.

11 Sec. 48. Sections 633.2; 633.3, unnumbered paragraph 1;
12 633.3, subsections 7 and 20; 633.22, subsection 4; 633.34;
13 633.38; 633.40, subsection 1; 633.44; 633.46; 633.47; 633.71;
14 633.88; 633.118; 633.160; 633.162; 633.350; 633.365; 633.389;
15 633.433; 633.434; 633.500; 633.502; 633.597; 633.633;
16 633.633A; and 633.652, Code 2005, are amended by striking from
17 the applicable section, paragraph, or subsection the word
18 "Code" and inserting in lieu thereof the following: "probate
19 code".

20 Sec. 49. CODE EDITOR DIRECTIVE. Sections 633.707,
21 unnumbered paragraph 1; 633.711, subsection 2; 633.800;
22 633.801, unnumbered paragraph 1; 633.803; 633.807, subsections
23 2 and 7; 633.808; 633.809; 633.810; 633.901; 633.902,
24 unnumbered paragraph 1; 633.903; 633.904; 633.905, subsection
25 6; 633.913, subsections 5 and 6; 633.914; 633.915; 633.916;
26 633.917; 633.1101; 633.1102, unnumbered paragraph 1; and
27 633.1104; Code 2005, are amended by striking from the
28 applicable section, paragraph, or subsection the word
29 "division" and inserting in lieu thereof the following:
30 "chapter".

31 Sec. 50. CODE EDITOR DIRECTIVE. The Code editor is
32 directed to transfer from chapter 633, division XVII (sections
33 633.705 and 633.706), division XVIII (633.707 through
34 633.711), division XIX (633.800 through 633.811), and division
35 XX (633.901 through 633.917), as amended in this Act, to new

1 chapters 633B, 633C, 633D, and 633E, respectively.

2 Sec. 51. CODE EDITOR DIRECTIVE. The Code editor is
3 directed to transfer from chapter 633, sections 633.1101
4 through 633.1108, 633.2101 through 633.2107, 633.2201 through
5 633.2208, 633.2301 through 633.2303, 633.3101 through
6 633.3111, 633.4101 through 633.4111, 633.4201 through
7 633.4214, 633.4301 through 633.4309, 633.4401 and 633.4402,
8 633.4501 through 633.4507, 633.4601 through 633.4605, 633.4701
9 and 633.4702, 633.5101 through 633.5104, 633.6101 through
10 633.6105, 633.6201 and 633.6202, and 633.6301 through
11 633.6308, as amended in this Act, to new chapter 633A and to
12 retain the same section number designations.

13 Sec. 52. CODE EDITOR DIRECTIVE. The Code editor is
14 directed to correct internal references in the Code as
15 necessary due to the enactment of this Act.

16 EXPLANATION

17 This bill amends various provisions in the probate code,
18 and transfers certain divisions currently located in the
19 probate code (Code chapter 633) relating to trusts (division
20 XXI, also known as the Iowa trust code), powers of attorney
21 (division XVII), medical assistance trusts (division XVIII),
22 transfers on death security registration (division XIX), and
23 uniform disclaimer of property interest Act (division XX) from
24 the probate code to Code chapters 633A, 633B, 633C, 633D, and
25 633E, respectively. The bill also consolidates certain
26 provisions relating to trusts into the trust code.

27 The bill amends the definition of a trust subject to the
28 ongoing administration and supervision of the probate code to
29 specifically include a trust in existence on July 1, 2005, and
30 that is subject to continuous court supervision and a trust
31 established by court decree that is subject to continuous
32 court supervision. Such a trust shall be governed by both the
33 probate code and the trust code, as amended, where the
34 provisions of the trust code do not conflict with the
35 provisions of the probate code. Upon joint application by the

1 trustee administering a trust that is in existence on July 1,
2 2005, and subject to continuous court supervision, and
3 following notice to the appropriate beneficiaries, the court
4 shall release the trust from further jurisdiction of the
5 probate court unless a beneficiary objects. Conforming
6 amendments in both the probate code and the trust code
7 emphasize that all court proceedings regarding trusts shall be
8 governed by the district court sitting in probate.

9 The bill makes conforming Code changes, including repeals,
10 to sections of the probate code related to the amended
11 definition of a trust and the administration of the probate
12 docket.

13 The bill amends sections in the probate code relating to
14 small distributions of money to minors under the terms of a
15 will to a bequest or legacy or to a share of the estate of an
16 intestate, by increasing the size of the interest from \$10,000
17 to \$25,000. The bill creates a similar provision in the trust
18 code, as amended, relating to small distributions of money to
19 minors in regard to a beneficial interest in a trust fund.

20 The bill amends and repeals sections in the probate code
21 that were enacted prior to the creation of the trust code
22 relating to general default powers of a trustee, modification
23 or termination of uneconomical testamentary trusts, and the
24 creation and establishment of separate trusts.

25 The bill amends sections of the probate code relating to
26 the right of a surviving spouse to take an elective share of
27 the deceased spouse's estate including the right to receive a
28 share of the deceased spouse's revocable trust assets and the
29 right to elect a life estate in the homestead. Current law
30 provides that a surviving spouse may elect against the will of
31 a deceased spouse and claim a statutory share that does not
32 include property held in trust by the deceased spouse or the
33 right to elect a life estate in the homestead.

34 The bill amends sections of the probate code relating to
35 the revocation of spousal benefits in a testator's will upon

1 divorce or dissolution of the testator's marriage to include
2 relatives of the spouse who, after the divorce, are not
3 relatives of the testator, and duplicates the same amendments
4 relating to a settlor's revocable trust upon divorce or
5 dissolution of the settlor's marriage in the trust code, as
6 amended.

7 The bill amends a section of the probate code relating to
8 the determination of which estates must file inheritance tax
9 returns with the Iowa department of revenue.

10 The bill removes divisions in the probate code related to
11 powers of attorney (division XVII), medical assistance trusts
12 (division XVIII), transfers on death security registration
13 (division XIX), and uniform disclaimer of property interest
14 (division XX), from the probate code and creates separate Code
15 chapters 633B, 633C, 633D, and 633E, respectively. The bill
16 amends power of attorney provisions relating to the validity
17 of power of attorney instruments and financial institutions.

18 The bill removes the trust code (division XXI) from the
19 probate code, amends certain sections, and creates a separate
20 Code chapter (633A) for the trust code.

21 The bill amends sections of the trust code relating to the
22 scope of the trust code and trusts governed by the probate
23 code, parallel to the amended provisions regarding the
24 distinction between trusts subject to continuous court
25 supervision and trusts not subject to continuous court
26 supervision in the probate code. The bill also amends
27 sections of the trust code relating to the division of a trust
28 for tax purposes, the rights of creditors or transferees to
29 obtain trust assets, the effect of a divorce or dissolution on
30 a settlor's revocable trust, and trust construction provisions
31 relating to rights of survivorship and future interests.

32 The bill creates new sections in the trust code applying
33 the uniform simultaneous death Act and the uniform principal
34 and income Act to trusts subject to the trust code.

35 The bill repeals certain sections in Code chapter 636

1 relating to powers and duties of trustees of trusts not
2 subject to court administration, the validity of voluntary
3 trusts, and the definition of an adjusted gross estate in an
4 express trust not subject to probate court administration.

5 The bill directs the Code editor to transfer and recodify
6 the appropriate divisions and to make conforming internal
7 reference changes, as necessary.

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SENATE FILE 379

AN ACT

RELATING TO THE IOWA PROBATE CODE, THE IOWA TRUST CODE, AND CERTAIN OTHER TRUSTS.

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

Section 1. Section 249A.3, subsection 11, paragraph d, Code 2005, is amended to read as follows:

d. Failure of a surviving spouse to take ~~against-a-will~~ an elective share pursuant to chapter 633, division V, constitutes a transfer of assets for the purpose of determining eligibility for medical assistance to the extent that the value received by taking ~~against-the-will~~ an elective share would have exceeded the value of the inheritance received under the will.

Sec. 2. Section 633.3, subsection 15, Code 2005, is amended by striking the subsection and inserting in lieu thereof the following:

15. ESTATE -- the real and personal property of either a decedent or a ward, and may also refer to the real and personal property of a trust as defined in section 633.10.

Sec. 3. Section 633.3, subsection 17, Code 2005, is amended to read as follows:

17. FIDUCIARY -- includes personal representative, executor, administrator, guardian, conservator, and the trustee of any trust as defined in section 633.10.

Sec. 4. Section 633.3, subsection 34, Code 2005, is amended to read as follows:

34. TRUSTEE -- the person or persons ~~appointed-as-trustee by-the-instrument-creating-the-trust, or-the-person-or-persons appointed-by-the-court-to-administer-the-trust~~ serving as trustee of a trust as defined in section 633.10.

Sec. 5. Section 633.3, subsection 35, Code 2005, is amended by striking the subsection and inserting in lieu thereof the following:

35. TRUSTS -- includes only those trusts defined in section 633.10.

Sec. 6. Section 633.10, unnumbered paragraph 1, Code 2005, is amended to read as follows:

The In addition to the jurisdiction granted the district court under the trust code or elsewhere, the district court sitting in probate shall have jurisdiction of:

Sec. 7. Section 633.10, subsection 2, Code 2005, is amended to read as follows:

2. CONSTRUCTION OF WILLS ~~AND-TRUST-INSTRUMENTS.~~

The construction of wills ~~and-trust-instruments~~ during the administration of the estate ~~or-trust~~, whether said construction be incident to such administration, or as a separate proceeding.

Sec. 8. Section 633.10, subsection 4, Code 2005, is amended by striking the subsection and inserting in lieu thereof the following:

4. TRUSTS AND TRUSTEES.

a. The ongoing administration and supervision, including but not limited to the appointment of trustees, the granting of letters of trusteeship, trust administration, and trust settlement and closing, of the following trusts:

- (1) A trust that was in existence on July 1, 2005, and that is subject to continuous court supervision.
- (2) A trust established by court decree that is subject to continuous court supervision.

b. A trust described in paragraph "a" shall be governed by this chapter and the provisions of chapter 633A which are not inconsistent with the provisions of this chapter.

c. A trust not described in paragraph "a" shall be governed exclusively by chapter 633A and shall be subject to the jurisdiction of the district court sitting in probate only as provided in section 633.6101.

d. Upon joint application by all trustees administering a trust described in paragraph "a" and following notice to the beneficiaries pursuant to section 633.40, the court shall release the trust from further jurisdiction unless a beneficiary objects. The court whose decree created the trust may release the trust from continuous court supervision following notice to the beneficiary pursuant to section 633.40. If such judicial release occurs for a trust previously governed by this chapter, such trust shall be governed by chapter 633A and the district court sitting in probate only as provided in section 633.6101.

Sec. 9. Section 633.27, subsection 4, Code 2005, is amended to read as follows:

4. The title of each trust ~~where letters of trusteeship are issued~~ described in section 633.10 that has not been released by the court from continuous court supervision.

Sec. 10. Section 633.108, Code 2005, is amended to read as follows:

633.108 SMALL DISTRIBUTIONS TO MINORS -- PAYMENT.

Whenever a minor becomes entitled under the terms of a will to a bequest or legacy, or to a share of the estate of an intestate, ~~or to a beneficial interest in a trust fund upon the distribution of the trust fund,~~ and the value of the bequest, legacy, or share, ~~or interest~~ does not exceed the sum of ten twenty-five thousand dollars, the personal representative ~~or trustee~~ may pay the bequest, legacy, or share, ~~or interest~~ to a custodian under any uniform transfers to minors Act. Receipt by the custodian, when presented to the court or filed with the report of distribution of the fiduciary, shall have the same force and effect as though the payment had been made to a duly appointed and qualified conservator for the minor.

Sec. 11. Section 633.197, unnumbered paragraph 1, Code 2005, is amended to read as follows:

Personal representatives shall be allowed such reasonable fees as may be determined by the court for services rendered, but not in excess of the following commissions upon the gross

assets of the estate listed in the probate inventory ~~for Iowa inheritance tax purposes~~, which shall be received as full compensation for all ordinary services:

Sec. 12. Section 633.236, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.236 RIGHT OF ELECTIVE SHARE OF SURVIVING SPOUSE.

When a married person domiciled in Iowa at the time of death dies, the surviving spouse shall have the right to take an elective share under the provisions of sections 633.237 through 633.246. If the surviving spouse has a conservator, the court may authorize or direct the conservator to elect the share as the court deems appropriate under the circumstances.

Sec. 13. Section 633.237, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.237 PRESUMPTION AGAINST FILING ELECTIVE SHARE.

1. Following the appointment of a personal representative of the estate of the decedent, who is not the spouse, the personal representative shall cause to be served a written notice upon the surviving spouse pursuant to section 633.40, subsection 5, notifying the surviving spouse that unless, within four months after service of the notice, the spouse files an election in writing with the clerk of court electing the share as set forth in section 633.236, and sections 633.238 through 633.246, the spouse shall be deemed to take under the will or to receive the intestate share. If, within the four-month period following service of the notice, an affidavit is filed setting forth that the surviving spouse is incapable of making the election and does not have a conservator, the personal representative shall make application to the court for an order pursuant to section 633.244.

2. Following the death of a settlor of a revocable trust, the trustee of such revocable trust who is not the spouse shall cause to be served a written notice upon the surviving spouse pursuant to section 633.40, subsection 5, notifying the

surviving spouse that unless, within four months after service of the notice, the spouse files an election with the trustee electing the share as set forth in section 633.236, and sections 633.238 through 633.246, the spouse shall be deemed to take under the terms of the revocable trust. If, within the four-month period following service of the notice, an affidavit is filed setting forth that the surviving spouse is incapable of making the election and does not have a conservator, the trustee shall make application to the court for an order pursuant to section 633.244.

3. If the surviving spouse has a conservator, notice shall be given to the conservator and the spouse pursuant to subsections 1 and 2.

4. The notice provisions under subsections 1 and 2 are not applicable if the surviving spouse is a personal representative of the estate or a trustee of a revocable trust. If the surviving spouse fails to file an election under this section within four months of the decedent's death, it shall be conclusively presumed that the surviving spouse elects to take under the will, receive the intestate share, or take under the revocable trust.

5. Upon application of the surviving spouse or the spouse's conservator filed before the time for making the election expires, the court may extend the period in which the surviving spouse may make the election.

Sec. 14. Section 633.238, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.238 ELECTIVE SHARE OF SURVIVING SPOUSE.

1. The elective share of the surviving spouse shall be all of the following:

a. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no express written relinquishment of right.

b. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.

c. One-third of all personal property of the decedent that is not necessary for the payment of debts and charges.

d. One-third in value of the property held in trust not necessary for the payment of debts and charges over which the decedent was a grantor and retained at the time of death the power to alter, amend, or revoke the trust, or over which the decedent waived or rescinded any such power within one year of the date of death, and to which the surviving spouse has not made any express written relinquishment.

2. The elective share described in this section shall be in lieu of any property the spouse would otherwise receive under the last will and testament of the decedent, through intestacy, or under the terms of a revocable trust.

Sec. 15. Section 633.239, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.239 SHARE TO EMBRACE HOMESTEAD.

The share of the surviving spouse in such real estate shall be set off in such manner as to include the homestead, or so much thereof as will be equal to the share allotted to the spouse pursuant to section 633.238 unless the spouse prefers a different arrangement, but no such different arrangement shall be allowed unless there is sufficient property remaining to pay the claims and charges against the decedent's estate.

Sec. 16. Section 633.240, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.240 ELECTION TO RECEIVE HOMESTEAD.

In estates in which the surviving spouse has filed an election and in all intestate estates, whether an election is filed or not, the surviving spouse or the spouse's conservator, if applicable, may, in lieu of the spouse's share in the real property possessed by the decedent at any time during the marriage, which has not been sold on execution or

other judicial sale, and to which the surviving spouse has made no express written relinquishment of right, elect to receive a life estate in the homestead. Such election shall be made and entered of record as provided in section 633.245. In making such election, the surviving spouse shall have all the rights as to the personal property provided in section 633.238, subsection 1, paragraphs "b", "c", and "d". In case of failure to make such election, the right to receive the life estate in the homestead shall be waived.

Sec. 17. Section 633.241, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.241 TIME FOR ELECTION TO RECEIVE LIFE ESTATE IN HOMESTEAD.

If the surviving spouse does not make an election to receive the life estate in the homestead and file it with the clerk within four months from the date of second publication of notice to creditors, it shall be conclusively presumed that the surviving spouse waives the right to make the election. The court on application may, prior to the expiration of the period of four months, for cause shown, enter an order extending the time for making the election.

Sec. 18. Section 633.242, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.242 RIGHTS OF ELECTION PERSONAL TO SURVIVING SPOUSE.

The right of the surviving spouse to take an elective share, and the right of the surviving spouse to receive a life estate in the homestead, are personal. They are not transferable and cannot be exercised for the spouse subsequent to the spouse's death. If the surviving spouse dies prior to filing an election, it shall be conclusively presumed that the surviving spouse does not take such elective share.

Sec. 19. Section 633.243, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.243 FILING ELECTIONS.

The filing of the elective share and the election to receive a life estate in the homestead shall be filed in the office of the clerk in which the decedent's estate is being administered and served on the trustee of the revocable trust. The court where the election is filed shall have exclusive jurisdiction over all matters regarding elections under this chapter.

Sec. 20. Section 633.244, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.244 INCOMPETENT SPOUSE -- ELECTION BY COURT.

In case an affidavit is filed that the surviving spouse is incapable of determining whether to take the elective share, or to elect to receive a life estate in the homestead, and does not have a conservator, the court shall fix a time and place of hearing on the matter and cause a notice thereof to be served upon the surviving spouse in such manner and for such time as the court may direct. At the hearing, a guardian ad litem shall be appointed to represent the spouse and the court shall enter such orders as it deems appropriate under the circumstances. The guardian ad litem shall be a practicing attorney.

Sec. 21. Section 633.246A, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.246A MEDICAL ASSISTANCE ELIGIBILITY.

Failure of a surviving spouse to make an election under this division constitutes a transfer of assets for the purpose of determining eligibility for medical assistance pursuant to chapter 249A to the extent that the value received by making the election would have exceeded the value of property received absent the election.

Sec. 22. Section 633.247, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.247 SETTING OFF ELECTIVE SHARE OF SURVIVING SPOUSE.

The share of the surviving spouse under section 633.236 may be set off by the mutual consent of all parties in interest, or by referees appointed by the court. An application to have the share set off by referees shall be made by an interested party in writing by filing with the clerk of court. A copy of such application shall be sent to all interested parties.

Sec. 23. Section 633.248, Code 2005, is amended to read as follows:

633.248 REFEREE -- NOTICE.

In the absence of mutual consent of all interested parties to the appointment of referees, the court shall fix a time and place for hearing upon such application and of the fact that referees will be appointed if such application is granted, and shall prescribe the time and manner of the service of notice of the hearing.

Sec. 24. Section 633.252, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.252 CONFIRMATION CONCLUSIVE -- POSSESSION.

An order confirming a report of the referee shall be binding and conclusive unless appealed within thirty days and the surviving spouse may bring an action to obtain possession of any assets set apart to the surviving spouse. Such elective share constitutes a judgment lien in favor of such surviving spouse against the possessor of such assets.

Sec. 25. Section 633.264, Code 2005, is amended to read as follows:

633.264 DISPOSAL OF PROPERTY BY WILL.

Subject to the rights of the surviving spouse to ~~elect to take against the will~~ an elective share as provided by section 633.236, any person of full age and sound mind may dispose by will of all the person's property, except sufficient to pay the debts and charges against the person's estate.

Sec. 26. Section 633.271, Code 2005, is amended to read as follows:

633.271 EFFECT OF DIVORCE OR DISSOLUTION.

1. If after making a will the testator is divorced or the testator's marriage is dissolved, all provisions in the will in favor of the testator's spouse or of a relative of the testator's spouse, including but not limited to dispositions, appointments ~~relating to~~ of property, and nominations to serve in any fiduciary or representative capacity, are thereby revoked by the divorce or dissolution of marriage, unless the will provides otherwise.

2. In Unless the will provides otherwise, in the event the testator and spouse remarry each other, the provisions of the will revoked by the divorce or dissolution of marriage shall be reinstated unless otherwise revoked by the testator, except for provisions in favor of a person who died prior to the remarriage which shall not be reinstated.

3. For the purposes of this section, "relative of the testator's spouse" means a person who is related to the divorced testator's former spouse by blood, adoption, or affinity, and who, subsequent to a divorce or dissolution of marriage, ceased to be related to the testator by blood, adoption, or affinity.

Sec. 27. Section 633.434, unnumbered paragraph 2, Code 2005, is amended to read as follows:

Upon the expiration of the later to occur of four months after the date of the second publication of notice to creditors or one month after the service of the notice by ordinary mail upon all claimants whose identities are reasonably ascertainable, at their last known addresses and whose claims will not or may not be paid or otherwise satisfied during administration, the personal representative shall pay the debts and charges against the estate in accordance with this probate code. If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand, or that there is other good and sufficient cause, the personal representative may report that fact to the court and apply for any order that the personal representative deems necessary.

Sec. 28. Section 633.477, subsection 10, Code 2005, is amended to read as follows:

10. A statement as to whether or not all statutory requirements pertaining to taxes have been complied with ~~and a statement as to~~ including whether the federal estate tax due has been paid, ~~and whether a lien continues to exist for any federal estate tax, and whether inheritance tax was paid or a return was filed in this state.~~

Sec. 29. Section 633.574, Code 2005, is amended to read as follows:

633.574 PROCEDURE IN LIEU OF CONSERVATORSHIP.

If a conservator has not been appointed, money due a minor or other property to which a minor is entitled, not exceeding in the aggregate ~~ten~~ twenty-five thousand dollars in value, shall be paid or delivered to a custodian under any uniform transfers to minors Act. The written receipt of the custodian constitutes an acquittance of the person making the payment of money or delivery of property.

Sec. 30. Section 633.681, Code 2005, is amended to read as follows:

633.681 ASSETS OF MINOR WARD EXHAUSTED.

When the assets of a minor ward's conservatorship are exhausted or consist of personal property only of an aggregate value not in excess of ~~ten~~ twenty-five thousand dollars, the court, upon application or upon its own motion, may terminate the conservatorship. The order for termination shall direct the conservator to deliver any property remaining after the payment of allowed claims and expenses of administration to a custodian under any uniform transfers to minors Act. Such delivery shall have the same force and effect as if delivery had been made to the ward after attaining majority.

Sec. 31. Section 633.699, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.699 POWERS OF TRUSTEES.

Unless it is otherwise provided by the will creating a testamentary trust, the instrument creating an express trust,

or by an order or decree duly entered by a court of competent jurisdiction, a trustee shall have all the powers granted a trustee under sections 633.4401 and 633.4402. Documents incorporating by reference powers granted a trustee under the probate code or under this section shall be interpreted accordingly, even if the execution or adoption of the instrument creating the trust occurred prior to July 1, 2005.

Sec. 32. NEW SECTION. 633.699B APPLICABILITY OF LAW.

The terms of this division, and all other terms of this probate code relating to trusts and trustees, shall apply only to trusts that remain under continuous court supervision pursuant to section 633.10 and to trusts that have not been released from such continuous supervision pursuant to section 633.10. Regarding all such trusts, the terms of this chapter shall supersede any inconsistent terms in the trust code and such trusts shall be governed by terms of the trust code that are not inconsistent with this probate code.

Sec. 33. Section 633.705, Code 2005, is amended by adding the following new subsections:

NEW SUBSECTION. 3. Receipt of the affidavit described in subsection 2 by the holder of the principal's property constitutes sufficient acquittance for the payment of money, delivery of property, or transfer of a registered ownership of property as directed by the attorney in fact or agent and discharges the holder from further liability with respect to the money or property, if the holder has taken reasonable steps to verify the identity of the person acting as attorney in fact or agent. The holder of the principal's property may rely in good faith on the statements contained in the affidavit and has no duty to inquire into the truth of any statements in the affidavit.

NEW SUBSECTION. 4. If an attorney in fact or agent has provided the affidavit described in subsection 2 and the holder of the principal's property refuses to pay, deliver, or transfer any property or evidence thereof within a reasonable amount of time, the principal, acting through the attorney in fact or agent, may recover the property or compel its payment,

delivery, or transfer in an action brought for that purpose against the holder of the property.

a. If an action is brought against the holder under this subsection and the court finds that the holder of the principal's property acted unreasonably in refusing to pay, deliver, or transfer the property as directed by the attorney in fact, the court may award any or all of the following to the principal:

- (1) Damages sustained by the principal.
- (2) Costs of the action.
- (3) A penalty in an amount determined by the court, not less than five hundred dollars or more than one thousand dollars.
- (4) Reasonable attorney fees, as determined by the court, based on the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the principal.

b. No action shall be brought pursuant to this section more than one year after the date of the occurrence of the violation.

Sec. 34. Section 633.706, Code 2005, is amended by adding the following new subsections:

NEW SUBSECTION. 4. Receipt, by the holder of the principal's property, of the affidavit described in subsection 2 constitutes sufficient acquittance for the payment of money, delivery of property, or transfer of the registered ownership of property as directed by the attorney in fact or agent and discharges the holder from any further liability to any person with respect to the money or the property, if the holder has taken reasonable steps to verify the identity of the person acting as attorney in fact or agent. The holder of the principal's property may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any of the statements in the affidavit.

NEW SUBSECTION. 5. If an attorney in fact or agent has provided the affidavit described in subsection 2 and the holder of the principal's property refuses to pay, deliver, or

transfer any property or evidence thereof within a reasonable amount of time, the principal, acting through the attorney in fact may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property.

a. If an action is brought against the holder under this subsection and the court finds that the holder of the principal's property acted unreasonably in refusing to pay, deliver, or transfer the property as directed by the attorney in fact, the court may award any or all of the following to the principal:

- (1) Damages sustained by the principal.
- (2) Costs of the action.
- (3) A penalty in an amount determined by the court, not less than five hundred dollars or more than one thousand dollars.
- (4) Reasonable attorney fees, as determined by the court, based on the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the principal.

b. No action shall be brought pursuant to this section more than one year after the date of the occurrence of the violation.

Sec. 35. Section 633.1102, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 0A. "Adjusted gross estate", as it relates to a trust, means the same as defined in section 633.266.

Sec. 36. Section 633.1107, Code 2005, is amended to read as follows:

633.1107 SCOPE OF TRUST CODE.

1. This Except as otherwise provided in subsection 2, this trust code is-intended-to shall apply to trusts, as defined in section 633.1102, ~~subsection-17,~~ that are intentionally created, or deemed to be intentionally created, by individuals and other entities.

2. With regard to trusts described in section 633.10, that have not been judicially released from continuous court supervision, this trust code shall apply only to the extent not inconsistent with the relevant provisions of chapter 633. With regard to all other trusts defined in section 633.1102, the terms of chapter 633 shall be inapplicable, and the terms of this trust code shall prevail over any inconsistent provisions of Iowa law.

Sec. 37. Section 633.2208, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 3. By way of illustration and without limitation, a trust may be divided pursuant to this section to allow a trust to qualify as a marital deduction trust for tax purposes, as a qualified subchapter S trust for federal income tax purposes, as a separate trust for federal generation skipping tax purposes, or for any other federal or state income, estate, excise, or inheritance tax benefit, or to facilitate the administration of a trust.

Sec. 38. Section 633.2301, subsection 4, unnumbered paragraph 1, Code 2005, is amended to read as follows:

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

Sec. 39. Section 633.2303, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The assets of an irrevocable trust shall not become subject to the claims of creditors of the settlor of a trust solely due to a provision in the trust that allows a trustee of the trust to reimburse the settlor for income taxes payable on the income of the trust. This subsection shall not limit the rights of a creditor of the settlor to assert a claim against the assets of the trust due to the retention or grant of any rights to the settlor under the trust instrument or any other beneficial interest of the settlor other than as specifically set forth in this subsection.

Sec. 40. Section 633.3107, Code 2005, is amended to read as follows:

633.3107 EFFECT OF DIVORCE OR DISSOLUTION.

1. If, after executing a revocable trust, the settlor is divorced or the settlor's marriage is dissolved, all provisions in the trust in favor of the settlor's spouse or of a relative of the settlor's spouse, including, but not limited to, dispositions, appointments of property, and nominations to serve in any fiduciary or representative capacity are revoked by divorce or dissolution of marriage unless the trust instrument provides otherwise.

2. ~~In~~ Unless the trust instrument provides otherwise, in the event the settlor and spouse remarry each other, the provisions of the revocable trust revoked by the divorce or dissolution of marriage shall be reinstated unless otherwise modified by the settlor, except for provisions in favor of a person who died prior to the remarriage which shall not be reinstated.

For the purposes of this section, "relative of the settlor's spouse" means a person who is related to the divorced settlor's former spouse by blood, adoption, or affinity, and who, subsequent to the divorce or dissolution of marriage, ceased to be related to the settlor by blood, adoption, or affinity.

Sec. 41. NEW SECTION. 633.3112 CLASSIFICATION OF DEBTS AND CHARGES.

If a revocable trust becomes subject to the claims of a settlor's creditors and the costs of administration of the settlor's estate pursuant to section 633.3104, following the payment of the proper costs of administration of the trust and any claims against the trust, the debts and charges of the settlor's estate payable by the trust shall be classified pursuant to sections 633.425 and 633.426 as such sections exist on the date of the settlor's death.

Sec. 42. Section 633.4701, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 8A. For the purposes of this section, a term of the trust requiring that a beneficiary survive a person whose death does not make the beneficiary entitled to possession or enjoyment of the beneficiary's interest in the trust shall not be considered as "otherwise specifically stated by the terms of the trust" nor as an "express condition of survivorship imposed by the terms of the trust".

Sec. 43. Section 633.4701, subsection 9, Code 2005, is amended to read as follows:

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

Sec. 44. **NEW SECTION. 633.4703 GENERAL ORDER FOR ABATEMENT.**

Except as otherwise provided by the governing instrument, where necessary to abate shares of the beneficiaries of a trust for the payment of debts and charges, federal and state estate taxes, bequests, and the shares of children born or adopted after the execution of the trust, abatement shall occur in the following order:

1. Shares allocated to the residuary beneficiaries of the trust shall be abated first, on a pro rata basis.
2. Shares defined by a dollar amount, on a pro rata basis.
3. Shares described as specific items of property whether tangible or intangible shall be abated last, and such abatement shall be done as equitably by the trustee among the various beneficiaries as circumstances reasonably allow.
4. Notwithstanding subsections 1, 2, or 3, a disposition in favor of the grantor's surviving spouse shall not be abated

where such abatement would have the effect of increasing the amount of federal estate or federal gift taxes payable by a person or an entity.

Sec. 45. **NEW SECTION. 633.4704 SIMULTANEOUS DEATH.**

If the determination of the successor of a beneficial interest in a trust is dependent upon whether a beneficiary has survived the death of a settlor, of another beneficiary, or of any other person, the uniform simultaneous death Act, sections 633.523 through 633.528, shall govern the determination of who shall be considered to have died first.

Sec. 46. **NEW SECTION. 633.4705 PRINCIPAL AND INCOME.**

Chapter 637 shall apply to trusts subject to this chapter.

Sec. 47. **NEW SECTION. 633.4706 SMALL DISTRIBUTIONS TO MINORS -- PAYMENT.**

When a minor becomes entitled under the terms of the trust to a beneficial interest in the trust upon the distribution of the trust fund and the value of the interest does not exceed the sum of twenty-five thousand dollars, the trustee may pay the interest to a custodian under any uniform transfers to minors Act. Receipt by the custodian shall have the same force and effect as though payment had been made to a duly appointed and qualified conservator for the minor.

Sec. 48. **NEW SECTION. 633.5105 CHARITABLE TRUSTS.**

In addition to the provisions of this chapter, a charitable trust that is a private foundation shall be governed by the provisions of chapter 634.

Sec. 49. Section 633.6101, Code 2005, is amended to read as follows:

633.6101 **SUBJECT MATTER JURISDICTION.**

The district court sitting in probate has exclusive jurisdiction of proceedings concerning the internal affairs of a trust and of actions and proceedings to determine the existence of a trust, actions and proceedings by or against creditors or debtors of a trust, and other actions and proceedings involving a trust and third persons. Such jurisdiction may be invoked by any interested party at any time.

Sec. 50. Sections 633.28, 633.699A, 633.703A, 633.703B, 633.7101, 636.60, 636.60A, 636.61, Code 2005, are repealed.

Sec. 51. Sections 633.2; 633.3, unnumbered paragraph 1; 633.3, subsections 7 and 20; 633.22, subsection 4; 633.34; 633.38; 633.40, subsection 1; 633.44; 633.46; 633.47; 633.71; 633.88; 633.118; 633.160; 633.162; 633.350; 633.365; 633.389; 633.433; 633.500; 633.502; 633.597; 633.633; 633.633A; and 633.652, Code 2005, are amended by striking from the applicable section, paragraph, or subsection the word "Code" and inserting in lieu thereof the following: "probate code".

Sec. 52. CODE EDITOR DIRECTIVE. Sections 633.707, unnumbered paragraph 1; 633.711, subsection 2; 633.800; 633.801, unnumbered paragraph 1; 633.803; 633.807, subsections 2 and 7; 633.808; 633.809; 633.810; 633.901; 633.902, unnumbered paragraph 1; 633.903; 633.904; 633.905, subsection 6; 633.913, subsections 5 and 6; 633.914; 633.915; 633.916; 633.917; 633.1101; 633.1102, unnumbered paragraph 1; and 633.1104; Code 2005, are amended by striking from the applicable section, paragraph, or subsection the word "division" and inserting in lieu thereof the following: "chapter".

Sec. 53. CODE EDITOR DIRECTIVE. The Code editor is directed to transfer from chapter 633, division XVII (sections 633.705 and 633.706), division XVIII (633.707 through 633.711), division XIX (633.800 through 633.811), and division XX (633.901 through 633.917), as amended in this Act, to new chapters 633B, 633C, 633D, and 633E, respectively.

Sec. 54. CODE EDITOR DIRECTIVE. The Code editor is directed to transfer from chapter 633, sections 633.1101 through 633.1108, 633.2101 through 633.2107, 633.2201 through 633.2208, 633.2301 through 633.2303, 633.3101 through 633.3111, 633.4101 through 633.4111, 633.4201 through 633.4214, 633.4301 through 633.4309, 633.4401 and 633.4402, 633.4501 through 633.4507, 633.4601 through 633.4605, 633.4701 and 633.4702, 633.5101 through 633.5104, 633.6101 through 633.6105, 633.6201 and 633.6202, and 633.6301 through 633.6308, as amended in this Act, to new chapter 633A and to retain the same section number designations.

Sec. 55. CODE EDITOR DIRECTIVE. The Code editor is directed to correct internal references in the Code as necessary due to the enactment of this Act.

JOHN P. KIBBIE
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 379, Eighty-first General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved 4/19, 2005

THOMAS J. VILSACK
Governor