

# House Study Bill 735

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

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

## A BILL FOR

1 An Act relating to trusts and estates including the  
2 administration of small estates, and including retroactive and  
3 other applicability provisions.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 5222HC 82  
6 rh/rj/8

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1 1 Section 1. Section 12.71, subsection 8, Code 2007, is  
1 2 amended to read as follows:  
1 3 8. Bonds issued under the provisions of this section are  
1 4 declared to be issued for a general public and governmental  
1 5 purpose and all bonds issued under this section shall be  
1 6 exempt from taxation by the state of Iowa and the interest on  
1 7 the bonds shall be exempt from the state income tax and the  
1 8 state inheritance ~~and estate~~ tax.  
1 9 Sec. 2. Section 12.81, subsection 8, Code 2007, is amended  
1 10 to read as follows:  
1 11 8. Bonds issued under the provisions of this section are  
1 12 declared to be issued for a general public and governmental  
1 13 purpose and all bonds issued under this section shall be  
1 14 exempt from taxation by the state of Iowa and the interest on  
1 15 the bonds shall be exempt from the state income tax and the  
1 16 state inheritance ~~and estate~~ tax.  
1 17 Sec. 3. Section 12.91, subsection 9, Code Supplement 2007,  
1 18 is amended to read as follows:  
1 19 9. Bonds issued under the provisions of this section are  
1 20 declared to be issued for a general public and governmental  
1 21 purpose and all bonds issued under this section shall be  
1 22 exempt from taxation by the state of Iowa and the interest on  
1 23 the bonds shall be exempt from the state income tax and the  
1 24 state inheritance ~~and estate~~ tax.  
1 25 Sec. 4. Section 16.177, subsection 8, Code 2007, is  
1 26 amended to read as follows:  
1 27 8. Bonds issued under this section are declared to be  
1 28 issued for an essential public and governmental purpose and  
1 29 all bonds issued under this section shall be exempt from  
1 30 taxation by the state of Iowa and the interest on the bonds  
1 31 shall be exempt from the state income tax and the state  
1 32 inheritance ~~and estate~~ tax.  
1 33 Sec. 5. Section 321.47, unnumbered paragraph 2, Code 2007,  
1 34 is amended to read as follows:  
1 35 The persons entitled under the laws of descent and  
2 1 distribution of an intestate's property to the possession and  
2 2 ownership of a vehicle owned in whole or in part by a  
2 3 decedent, upon filing an affidavit stating the name and date  
2 4 of death of the decedent, the right to possession and  
2 5 ownership of the persons filing the affidavit, and that there  
2 6 has been no administration of the decedent's estate, which  
2 7 instrument shall also contain an agreement to indemnify  
2 8 creditors of the decedent who would be entitled to levy  
2 9 execution upon the motor vehicle to the extent of the value of  
2 10 the motor vehicle, are entitled upon fulfilling the other  
2 11 requirements of this chapter, to the issuance of a  
2 12 registration card for the interest of the decedent in the  
2 13 vehicle and a certificate of title to it. If a decedent dies  
2 14 testate, and either the will is not probated or is admitted to  
2 15 probate without administration, the persons entitled to the  
2 16 possession and ownership of a vehicle owned in whole or in  
2 17 part by the decedent may file an affidavit and, upon

2 18 fulfilling the other requirements of this chapter, are  
2 19 entitled to the issuance of a registration card for the  
2 20 interest of the decedent in the vehicle and a certificate of  
2 21 title to the vehicle. The affidavit shall contain the same  
2 22 information and indemnity agreement as is required in cases of  
2 23 intestacy pursuant to this section. A requirement of chapter  
2 24 450 ~~or 451~~ shall not be considered satisfied by the filing of  
2 25 the affidavit provided for in this section. If, from the  
2 26 records in the office of the county treasurer, there appear to  
2 27 be any liens on the vehicle, the certificate of title shall  
2 28 contain a statement of the liens unless the application is  
2 29 accompanied by proper evidence of their satisfaction or  
2 30 extinction. Evidence of extinction may consist of, but is not  
2 31 limited to, an affidavit of the applicant stating that a  
2 32 security interest was foreclosed as provided in chapter 554,  
2 33 article 9, part 6.

2 34 Sec. 6. Section 421.60, subsection 2, paragraph c,  
2 35 unnumbered paragraph 1, Code 2007, is amended to read as  
3 1 follows:

3 2 If the notice of assessment or denial of a claim for refund  
3 3 relates to a tax return filed pursuant to section 422.14 or  
3 4 chapter 450, ~~or 450A, or 451~~, by the taxpayer which designates  
3 5 an individual as an authorized representative of the taxpayer  
3 6 with respect to that return, or if a power of attorney has  
3 7 been filed with the department by the taxpayer which  
3 8 designates an individual as an authorized representative of  
3 9 the taxpayer with respect to any tax that is included in the  
3 10 notice of assessment or denial of a claim for refund, a copy  
3 11 of the notice together with any additional information  
3 12 required to be sent to the taxpayer shall be sent to the  
3 13 authorized representative as well.

3 14 Sec. 7. Section 450.7, subsection 2, unnumbered paragraph  
3 15 1, Code 2007, is amended to read as follows:

3 16 2. Notice of the lien is not required to be recorded. The  
3 17 rights of the state under the lien have priority over all  
3 18 subsequent mortgages, purchases, or judgment creditors; and a  
3 19 conveyance after the decedent's death of the property subject  
3 20 to a lien does not discharge the property except as otherwise  
3 21 provided in this chapter. However, if additional tax is  
3 22 determined to be owing under this chapter ~~or chapter 451~~ after  
3 23 the lien has been released under paragraph "a" or "b", the  
3 24 lien does not have priority over subsequent mortgages,  
3 25 purchases, or judgment creditors unless notice of the lien is  
3 26 recorded in the office of the recorder of the county where the  
3 27 estate is probated, or where the property is located if the  
3 28 estate has not been administered. The department of revenue  
3 29 may release the lien by filing in the office of the clerk of  
3 30 the court in the county where the property is located, the  
3 31 decedent owner died, or the estate is pending or was  
3 32 administered, one of the following:

3 33 Sec. 8. Section 450.68, unnumbered paragraph 2, Code 2007,  
3 34 is amended to read as follows:

3 35 Federal tax returns, copies of returns, return information  
4 1 as defined in section 6103(b) of the Internal Revenue Code,  
4 2 and state inheritance tax returns, which are required to be  
4 3 filed with the department for the enforcement of the  
4 4 inheritance ~~and estate~~ tax laws of this state, shall be deemed  
4 5 and held as confidential by the department. However, such  
4 6 returns or return information, may be disclosed by the  
4 7 director to officers or employees of other state agencies,  
4 8 subject to the same confidentiality restrictions imposed on  
4 9 the officers and employees of the department.

4 10 Sec. 9. Section 455G.6, subsection 14, Code 2007, is  
4 11 amended to read as follows:

4 12 14. Bonds issued under the provisions of this section are  
4 13 declared to be issued for an essential public and governmental  
4 14 purpose and all bonds issued under this chapter shall be  
4 15 exempt from taxation by the state of Iowa and the interest on  
4 16 the bonds shall be exempt from the state income tax and the  
4 17 state inheritance ~~and estate~~ tax.

4 18 Sec. 10. Section 524.1406, subsection 3, paragraph a, Code  
4 19 2007, is amended to read as follows:

4 20 a. Notwithstanding any contrary provision in chapter 490,  
4 21 division XIII, in determining the fair value of the  
4 22 shareholder's shares of a bank organized under this chapter or  
4 23 a bank holding company as defined in section 524.1801 in a  
4 24 transaction or event in which the shareholder is entitled to  
4 25 appraisal rights, due consideration shall be given to  
4 26 valuation factors recognized for federal ~~and estate~~ tax  
4 27 purposes, including discounts for minority interests and  
4 28 discounts for lack of marketability. However, any payment

4 29 made to shareholders under section 490.1324 shall be in an  
4 30 amount not less than the stockholders' equity in the bank  
4 31 disclosed in its last statement of condition filed under  
4 32 section 524.220 or the total equity capital of the bank  
4 33 holding company disclosed in the most recent report filed by  
4 34 the bank holding company with the board of governors of the  
4 35 federal reserve system, divided by the number of shares

5 1 outstanding.

5 2 Sec. 11. Section 614.14, subsections 1 and 5, Code 2007,  
5 3 are amended to read as follows:

5 4 1. If an interest in real estate is held of record by a  
5 5 trustee, a bona fide purchaser acquires all rights in the real  
5 6 estate which the trustee and the beneficiary of the trust had  
5 7 and any rights of persons claiming by, through or under them,  
5 8 free of any adverse claim including but not limited to claims  
5 9 arising under section 561.13 or claims relating to an interest  
5 10 in real estate arising under section 633.238.

5 11 5. a. A person holding an adverse claim arising or  
5 12 existing prior to January 1, ~~1992~~ 2009, by reason of a  
5 13 transfer of an interest in real estate by a trustee, or a  
5 14 purported trustee, shall not file an action to enforce such  
5 15 claim after December 31, ~~1993~~ 2010, at law or in equity, in  
5 16 any court to recover or establish any interest in or claim to  
5 17 such real estate, legal or equitable, against the holder of  
5 18 the record title to the real estate.

5 19 b. An action based upon an adverse claim arising on or  
5 20 after January 1, ~~1992~~ 2009, by reason of a transfer of an  
5 21 interest in real estate by a trustee, or a purported trustee,  
5 22 shall not be maintained either at law or in equity, in any  
5 23 court to recover or establish any interest in or claim to such  
5 24 real estate, legal or equitable, against the holder of the  
5 25 record title to the real estate, legal or equitable, more than  
5 26 one year after the date of recording of the instrument from  
5 27 which such claim may arise.

5 28 Sec. 12. Section 614.14, Code 2007, is amended by adding  
5 29 the following new subsection:

5 30 NEW SUBSECTION. 7. An interest in real estate currently  
5 31 or previously held of record by a trust shall be deemed to be  
5 32 held of record by the trustee of such trust.

5 33 Sec. 13. Section 633.175, Code 2007, is amended to read as  
5 34 follows:

5 35 633.175 WAIVER OF BOND BY COURT.

6 1 The court, for good cause shown, may exempt any fiduciary  
6 2 from giving bond, if the court finds that the interests of  
6 3 creditors and distributees will not thereby be prejudiced.  
6 4 However, the court, except as provided in section 633.172,  
6 5 subsection 2, shall not exempt a conservator from giving bond  
6 6 in a conservatorship with total assets of more than ~~ten~~  
6 7 twenty-five thousand dollars, excluding real property, unless  
6 8 it is a voluntary conservatorship in which the petitioner is  
6 9 eighteen years of age or older and has waived bond in the  
6 10 petition.

6 11 Sec. 14. Section 633.241, Code 2007, is amended to read as  
6 12 follows:

6 13 633.241 TIME FOR ELECTION TO RECEIVE LIFE ESTATE IN  
6 14 HOMESTEAD.

6 15 If the surviving spouse does not make an election to  
6 16 receive the life estate in the homestead and file it with the  
6 17 clerk within four months from the date of ~~second publication~~  
6 18 ~~of notice to creditors~~ service of notice under section  
6 19 633.237, it shall be conclusively presumed that the surviving  
6 20 spouse waives the right to make the election. The court on  
6 21 application may, prior to the expiration of the period of four  
6 22 months, for cause shown, enter an order extending the time for  
6 23 making the election.

6 24 Sec. 15. Section 633.267, Code 2007, is amended to read as  
6 25 follows:

6 26 633.267 CHILDREN BORN OR ADOPTED AFTER EXECUTION OF WILL.

6 27 ~~When~~ If a testator fails to provide in the testator's will  
6 28 for any of the testator's children born to or adopted by the  
6 29 testator after the ~~making~~ execution of the testator's last  
6 30 will, such child, whether born before or after the testator's  
6 31 death, shall receive a share in the estate of the testator  
6 32 equal in value to that which the child would have received  
6 33 under section 633.211, 633.212, or 633.219, whichever section  
6 34 or sections are applicable, if the testator had died  
6 35 intestate, unless it appears from the will that such omission  
7 1 was intentional.

7 2 Sec. 16. Section 633.374, Code 2007, is amended to read as  
7 3 follows:

7 4 633.374 ALLOWANCE TO SURVIVING SPOUSE.

7 5 1. If the personal representative of the estate is not the  
7 6 decedent's spouse, the personal representative of the estate  
7 7 shall cause written notice concerning support to be mailed to  
7 8 the surviving spouse pursuant to section 633.40, subsection 5.  
7 9 The notice shall inform the surviving spouse of the surviving  
7 10 spouse's right to apply, within four months of service of the  
7 11 notice, for support for a period of twelve months following  
7 12 the death of the decedent, and for support of the decedent's  
7 13 dependents who reside with the spouse for the same period of  
7 14 time.

7 15 2. The court shall, upon application, set off and order  
7 16 paid to the surviving spouse, as part of the costs of  
7 17 administration, sufficient of the decedent's property as it  
7 18 deems reasonable for the proper support of the surviving  
7 19 spouse for the period of twelve months following the death of  
7 20 the decedent. ~~When said~~ If the application is not made by the  
7 21 personal representative, notice of hearing upon the  
7 22 application shall be given to the personal representative.  
7 23 The court shall take into consideration the station in life of  
7 24 the surviving spouse and the assets and condition of the  
7 25 estate. The allowance shall also include such additional  
7 26 amount as the court deems reasonable for the proper support,  
7 27 during such period, of dependents of the decedent who reside  
7 28 with the surviving spouse. Such allowance to the surviving  
7 29 spouse shall not abate upon the death or remarriage of such  
7 30 spouse. If an application for support has not been filed  
7 31 within four months following service of the notice by or on  
7 32 behalf of the surviving spouse and the dependents of the  
7 33 decedent who reside with the surviving spouse, the surviving  
7 34 spouse and the dependents of the decedent shall be deemed to  
7 35 have waived the right to apply for support during the  
8 1 administration of the estate.

8 2 Sec. 17. Section 633A.2301, Code 2007, is amended by  
8 3 striking the section and inserting in lieu thereof the  
8 4 following:

8 5 633A.2301 RIGHTS OF BENEFICIARY, CREDITOR, AND ASSIGNEE.  
8 6 To the extent a beneficiary's interest is not subject to a  
8 7 spendthrift provision, and subject to sections 633A.2305 and  
8 8 633.2306, the court may authorize a creditor or assignee of  
8 9 the beneficiary to reach the beneficiary's interest by levy,  
8 10 attachment, or execution of present or future distributions to  
8 11 or for the benefit of the beneficiary or other means.

8 12 Sec. 18. Section 633A.2302, Code 2007, is amended by  
8 13 striking the section and inserting in lieu thereof the  
8 14 following:

8 15 633A.2302 SPENDTHRIFT PROTECTION RECOGNIZED.  
8 16 Except as otherwise provided in section 633A.2303:

8 17 1. A term of a trust providing that the interest of a  
8 18 beneficiary is held subject to a "spendthrift trust", or words  
8 19 of similar import, is sufficient to restrain both voluntary  
8 20 and involuntary transfer, assignment, and encumbrance of the  
8 21 beneficiary's interest.

8 22 2. A beneficiary shall not transfer, assign, or encumber  
8 23 an interest in a trust in violation of a valid spendthrift  
8 24 provision, and a creditor or assignee of the beneficiary of a  
8 25 spendthrift trust shall not reach the interest of the  
8 26 beneficiary or a distribution by the trustee before its  
8 27 receipt by the beneficiary.

8 28 Sec. 19. Section 633A.2303, Code 2007, is amended by  
8 29 striking the section and inserting in lieu thereof the  
8 30 following:

8 31 633A.2303 SPENDTHRIFT TRUSTS FOR THE BENEFIT OF SETTLOR.

8 32 A term of a trust prohibiting an involuntary transfer of a  
8 33 beneficiary's interest shall be invalid as against claims by  
8 34 any creditors of the beneficiary if the beneficiary is the  
8 35 settlor.

9 1 Sec. 20. NEW SECTION. 633A.2304 AMOUNT REACHABLE BY  
9 2 CREDITORS OR TRANSFEREES OF SETTLOR.

9 3 1. If a settlor is a beneficiary of a trust created by the  
9 4 settlor, a transferee or creditor of the settlor may reach the  
9 5 maximum amount that the trustee could pay to or for the  
9 6 settlor's benefit.

9 7 2. In the case of a trust with multiple settlors, the  
9 8 amount the creditors or transferees of a particular settlor  
9 9 may reach shall not exceed the portion of the trust  
9 10 attributable to that settlor's contribution.

9 11 3. The assets of an irrevocable trust shall not become  
9 12 subject to the claims of creditors of the settlor of a trust  
9 13 solely due to a provision in the trust that allows a trustee  
9 14 of the trust to reimburse the settlor for income taxes payable  
9 15 on the income of the trust. This subsection shall not limit

9 16 the rights of the creditor of the settlor to assert a claim  
9 17 against the assets of the trust due to the retention or grant  
9 18 of any rights to the settlor under the trust instrument or any  
9 19 other beneficial interest of the settlor other than as  
9 20 specifically set forth in this subsection.

9 21 Sec. 21. NEW SECTION. 633A.2305 DISCRETIONARY TRUSTS ==  
9 22 EFFECT OF STANDARD.

9 23 Whether or not a trust contains a spendthrift provision, a  
9 24 creditor or assignee of a beneficiary shall not compel a  
9 25 distribution that is subject to the trustee's discretion, even  
9 26 if any of the following occur:

9 27 1. The discretion is expressed in the form of a standard  
9 28 of distribution.

9 29 2. The trustee has abused its discretion.

9 30 Sec. 22. NEW SECTION. 633A.2306 COURT ACTION ==  
9 31 TRUSTEE'S DISCRETION.

9 32 If a trustee has discretion as to payments to a  
9 33 beneficiary, and refuses to make payments or exercise its  
9 34 discretion, the court shall neither order the trustee to  
9 35 exercise its discretion nor order payment from any such trust,  
10 1 if any such payment would inure, directly or indirectly, to  
10 2 the benefit of a creditor of the beneficiary.

10 3 Sec. 23. NEW SECTION. 633A.2307 OVERDUE DISTRIBUTION.

10 4 1. A creditor or assignee of a beneficiary may reach a  
10 5 mandatory distribution of income or principal, including a  
10 6 distribution upon termination of the trust, if the trustee has  
10 7 not made the distribution to the beneficiary within a  
10 8 reasonable time after the required distribution date.

10 9 2. For the purposes of this section, "mandatory  
10 10 distribution" means a distribution required by the express  
10 11 terms of the trust of any of the following:

10 12 a. All of the income, net income, or principal of the  
10 13 trust.

10 14 b. A fraction or percentage of the income or principal of  
10 15 the trust.

10 16 c. A specific dollar amount from the trust.

10 17 3. A distribution that is subject to a condition shall not  
10 18 be considered a mandatory distribution.

10 19 4. If a creditor or assignee of a beneficiary is permitted  
10 20 to reach a mandatory distribution under this section, the sole  
10 21 remedy of the creditor or assignee shall be to apply to the  
10 22 court having jurisdiction of the trust after a reasonable  
10 23 period of time has expired, for a judgment ordering the  
10 24 trustee to pay to the creditor or the assignee a sum of money  
10 25 equal to the lesser of the amount of the debt or assignment,  
10 26 or the amount of the mandatory distribution described in  
10 27 subsection 2. Any other remedy, including but not limited to  
10 28 attachment or garnishment of any interest in the trust,  
10 29 recovery of court costs or attorney fees, or placing a lien of  
10 30 any type on any trust property or on the interest of any  
10 31 beneficiary in the trust, shall not be permitted or ordered by  
10 32 any court. Any writing signed by the beneficiary, allowing  
10 33 any remedy other than payment of the mandatory distribution  
10 34 not made to the beneficiary within a reasonable time after  
10 35 required distribution date, shall be void and shall not be  
11 1 enforced by any court.

11 2 Sec. 24. Section 633A.3106, Code 2007, is amended to read  
11 3 as follows:

11 4 633A.3106 CHILDREN BORN OR ADOPTED AFTER EXECUTION OF A  
11 5 REVOCABLE TRUST.

11 6 When a settlor fails to provide in a revocable trust for  
11 7 any of the settlor's children born to or adopted by the  
11 8 settlor after the ~~making execution~~ of the trust ~~or the last~~  
11 9 ~~amendment to the trust~~, such child, whether born before or  
11 10 after the settlor's death, shall receive a share of the trust  
11 11 equal in value to that which the child would have received  
11 12 under section 633.211, 633.212, or 633.219, whichever is  
11 13 applicable, as if the settlor had died intestate, unless it  
11 14 appears from the terms of the trust or decedent's will that  
11 15 such omission was intentional.

11 16 Sec. 25. Section 633A.3108, subsection 2, Code 2007, is  
11 17 amended to read as follows:

11 18 2. Unless the trustee is a party to a pending proceeding  
11 19 contesting its validity, on or after the date six months  
11 20 following the death of the settlor, the trustee of a revocable  
11 21 trust may assume the trust's validity and proceed to  
11 22 distribute the trust property in accordance with the terms of  
11 23 the trust, without liability for so doing. Liability for an  
11 24 improper distribution in such a case is solely on the  
11 25 beneficiaries.

11 26 Sec. 26. Section 633A.5104, Code 2007, is amended to read

11 27 as follows:  
11 28 633A.5104 INTERESTED PERSONS == PROCEEDINGS.  
11 29 The settlor, or if the settlor is deceased or not  
11 30 competent, the settlor's designee named or designated pursuant  
11 31 to section 633A.5106, the trustee, the attorney general, and  
11 32 any charitable entity or other person with a special interest  
11 33 in the trust shall be interested persons in a proceeding  
11 34 involving a charitable trust.  
11 35 Sec. 27. NEW SECTION. 633A.5106 SETTLOR == ENFORCEMENT  
12 1 OF CHARITABLE TRUST == DESIGNATION.  
12 2 A settlor may maintain an action to enforce a charitable  
12 3 trust established by the settlor and may designate, either in  
12 4 the agreement establishing the trust or in a written statement  
12 5 signed by the settlor and delivered to the trustee, a person  
12 6 or persons, by name or by description, whether or not born at  
12 7 the time of such designation, to enforce the charitable trust  
12 8 if the settlor is deceased or not competent.  
12 9 Sec. 28. Section 635.1, Code Supplement 2007, is amended  
12 10 to read as follows:  
12 11 635.1 WHEN APPLICABLE.  
12 12 When the gross value of the probate assets of a decedent  
12 13 subject to the jurisdiction of this state does not exceed one  
12 14 hundred thousand dollars, and upon a petition as provided in  
12 15 section 635.2 of an authorized petitioner in accordance with  
12 16 section 633.227, 633.228, or 633.290, the clerk shall issue  
12 17 letters of appointment for administration to the proposed  
12 18 personal representative named in the petition, if qualified to  
12 19 serve pursuant to section 633.63 or upon court order pursuant  
12 20 to section 633.64. Unless otherwise provided in this chapter,  
12 21 the provisions of chapter 633 apply to an estate probated  
12 22 pursuant to this chapter.  
12 23 Sec. 29. Section 635.2, subsections 2 and 4, Code  
12 24 Supplement 2007, are amended to read as follows:  
12 25 2. The name and address of the surviving spouse, ~~if any~~  
12 26 and the name and relationship of each beneficiary in a testate  
12 27 estate or known heirs in an intestate estate.  
12 28 4. A statement that the probate property of the decedent  
12 29 subject to the jurisdiction of this state does not have an  
12 30 aggregate gross value of more than the amount permitted under  
12 31 the provisions of section 635.1 and the approximate amount of  
12 32 personal property and income for the purposes of setting a  
12 33 bond.  
12 34 Sec. 30. Section 635.8, subsections 2 and 4, Code  
12 35 Supplement 2007, are amended to read as follows:  
13 1 2. If no actions or proceedings involving the estate are  
13 2 pending in the court thirty days after notice of the closing  
13 3 statement is filed, the estate shall close and the personal  
13 4 representative shall be discharged after distribution and the  
13 5 personal representative shall be discharged upon the earlier  
13 6 of either of the following:  
13 7 a. The filing of a statement of disbursement of assets  
13 8 with the clerk by the personal representative.  
13 9 b. An additional thirty days have passed after notice of  
13 10 the closing statement is filed.  
13 11 4. If a closing statement is not filed within twelve  
13 12 months of the date of issuance of a letter of appointment, an  
13 13 interlocutory report shall be filed within such time period.  
13 14 Such report shall be provided to all interested parties at  
13 15 least once every six months until the closing statement has  
13 16 been filed unless excused by the court for good cause shown.  
13 17 The provisions of section 633.473 requiring final settlement  
13 18 within three years shall apply to an estate probated pursuant  
13 19 to this chapter. A closing statement filed under this section  
13 20 has the same effect as final settlement of the estate under  
13 21 chapter 633.  
13 22 Sec. 31. Chapter 451, Code 2007, is repealed.  
13 23 Sec. 32. Section 637.609, Code 2007, is repealed.  
13 24 Sec. 33. APPLICABILITY.  
13 25 1. The sections of this Act amending section 614.14 apply  
13 26 retroactively to all trusts in existence on or after July 1,  
13 27 1998.  
13 28 2. The section of this Act amending section 633.175  
13 29 applies to conservatorships in existence on or after the  
13 30 effective date of this Act.  
13 31 3. The sections of this Act amending sections 633.241,  
13 32 633.267, and 633.374 apply to estates of decedents dying on or  
13 33 after July 1, 2008.  
13 34 4. The section of this Act amending section 633A.3106  
13 35 applies to trusts of settlors dying on or after July 1, 2008.  
14 1 5. The section of this Act amending section 633A.3108  
14 2 applies to trusts in existence on or after July 1, 2008.

14 3 6. The sections of this Act amending section 633A.5104 and  
14 4 enacting section 633A.5106 apply to charitable trusts in  
14 5 existence on or after July 1, 2008.

14 6 EXPLANATION

14 7 This bill relates to trusts and estates including the  
14 8 administration of small estates, and includes applicability  
14 9 provisions.

14 10 The bill specifies that real estate conveyed to a revocable  
14 11 trust and subsequently sold or mortgaged by the trustee does  
14 12 not require a follow-up deed from the individual grantor and  
14 13 spouse. Such provisions apply retroactively to all trusts in  
14 14 existence on or after July 1, 1998.

14 15 The bill increases the amount of the value of assets in a  
14 16 conservatorship before a bond would be required from \$10,000  
14 17 to \$25,000. This provision applies to conservatorships in  
14 18 existence on or after the effective date of the bill.

14 19 The bill amends Code sections to specify how a surviving  
14 20 spouse must serve notice of the spouse's decision to take an  
14 21 elective share of the decedent's estate, including a life  
14 22 estate in the homestead, and requires personal representatives  
14 23 to notify the decedent's surviving spouse of the right to  
14 24 apply for a support allowance for the surviving spouse and the  
14 25 decedent's dependents who reside with the surviving spouse.  
14 26 These provisions apply to estates of decedents dying on or  
14 27 after July 1, 2008.

14 28 The bill amends provisions in the probate and trust codes  
14 29 relating to shares inherited by after born children under  
14 30 wills and revocable trusts, to specify the date for  
14 31 determining which heirs are pretermitted and to provide the  
14 32 same share to pretermitted heirs as those born before  
14 33 execution of the will or trust unless it appears from the  
14 34 terms of the document that the omission was intentional.  
14 35 These provisions apply to estates of decedents dying on or  
15 1 after July 1, 2008, and to trusts of settlors dying on or  
15 2 after July 1, 2008.

15 3 The bill reorganizes and restructures current provisions in  
15 4 the trust code relating to creditors' rights, spendthrift  
15 5 trusts, spendthrift trusts created for the benefit of the  
15 6 settlor, and overdue distributions, and creates new provisions  
15 7 relating to creditors' rights generally and discretionary  
15 8 trusts. The bill provides that to the extent a beneficiary's  
15 9 interest is not subject to a spendthrift provision, a court  
15 10 may authorize a creditor or assignee of the beneficiary to  
15 11 reach the beneficiary's interest by levy, attachment, or  
15 12 execution of present or future distributions to or for the  
15 13 benefit of the beneficiary or other means. The bill specifies  
15 14 that, regardless of whether a trust contains a spendthrift  
15 15 provision, a creditor or assignee of the beneficiary is not  
15 16 required to compel a distribution from the trust that is  
15 17 subject to the trustee's discretion even if the distribution  
15 18 is expressed in the form of a standard of distribution or the  
15 19 trustee has abused the trustee's discretion. The bill  
15 20 provides that if a trustee has discretion as to payments to a  
15 21 beneficiary and refuses to make payments or exercise its  
15 22 discretion, the court shall neither order the trustee to  
15 23 exercise its discretion nor order payment from any such trust,  
15 24 if any such payment would inure, directly or indirectly, to  
15 25 the benefit of a creditor of the beneficiary.

15 26 The bill specifies the date on which the trustee can  
15 27 proceed with trust administration on the assumption that the  
15 28 trust is valid and distributions can be made consistent with  
15 29 the provisions of the trust.

15 30 The bill provides that a donor has the right to designate  
15 31 who will have standing to enforce a charitable trust  
15 32 established by the settlor and may designate a person or  
15 33 persons to enforce the charitable trust if the settlor is  
15 34 deceased or not competent. These provisions apply to  
15 35 charitable trusts in existence on or after July 1, 2008.

16 1 The bill amends fiduciary appointment provisions and  
16 2 petition requirements in Code chapter 635 relating to the  
16 3 administration of small estates. The bill provides that if no  
16 4 actions or proceedings involving the estate are pending 30  
16 5 days after notice of the closing statement is filed, the small  
16 6 estate shall close and the personal representative shall be  
16 7 discharged upon the earlier of either the filing of a  
16 8 statement of disbursement of assets with the clerk by the  
16 9 personal representative or an additional 30 days have passed  
16 10 after notice of the closing statement is filed. Final  
16 11 settlement of a small estate shall be made within three years  
16 12 consistent with the provisions of Code section 633.473. Under  
16 13 Code chapter 635, a small estate is defined as an estate in

16 14 which the total value of probate and nonprobate assets does  
16 15 not exceed \$100,000.  
16 16 The bill repeals Code chapter 451 (Iowa estate tax) and  
16 17 makes coordinating amendments.  
16 18 The bill repeals a provision in the uniform principal and  
16 19 income Act relating to trusts and marital deductions and  
16 20 generation-skipping transfer taxes.  
16 21 Unless otherwise indicated, the bill applies to estates of  
16 22 decedents dying on or after July 1, 2008.  
16 23 LSB 5222HC 82  
16 24 rh/rj/8