

**House Study Bill 709 - Introduced**

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

**A BILL FOR**

1 An Act relating to trusts and estates including provisions  
2 relating to state inheritance tax, uniform transfers to  
3 minors, and medical assistance claims, and including an  
4 applicability provision.  
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 450.4, subsection 5, Code 2009, is  
2 amended by striking the subsection and inserting in lieu  
3 thereof the following:

4 5. a. On that portion of the decedent's interest in an  
5 employer-provided or employer-sponsored retirement plan or on  
6 that portion of the decedent's individual retirement account  
7 that will be subject to federal income tax when paid to the  
8 beneficiary. This exemption shall apply regardless of the  
9 identity of the beneficiary and regardless of the number of  
10 payments to be made after the decedent's death.

11 b. For purposes of this exemption:

12 (1) An individual retirement account includes an individual  
13 retirement annuity or any other arrangement as defined in  
14 section 408 of the Internal Revenue Code.

15 (2) An *“employer-provided or employer-sponsored retirement*  
16 *plan”* includes a qualified retirement plan as defined in section  
17 401 of the Internal Revenue Code, a governmental or nonprofit  
18 employer's deferred compensation plan as defined in section  
19 457 of the Internal Revenue Code, and an annuity as defined in  
20 section 403 of the Internal Revenue Code.

21 Sec. 2. Section 565B.6, subsection 3, paragraph c, Code  
22 2009, is amended to read as follows:

23 c. The transfer is authorized by the court if all ~~transfers~~  
24 ~~{including transfers, including the transfer to be made and~~  
25 ~~prior transfers}~~ transfers, exceed ~~ten~~ twenty-five thousand  
26 dollars in value. Transfers by a personal representative,  
27 trustee, or conservator shall not be aggregated, but each  
28 personal representative, trustee, or conservator shall be  
29 treated separately.

30 Sec. 3. Section 633.231, Code 2009, is amended to read as  
31 follows:

32 **633.231 Notice in intestate estates — medical assistance**  
33 **claims.**

34 1. Upon opening administration of an intestate estate,  
35 the administrator shall, in accordance with section 633.410,

1 provide by ~~ordinary mail~~ electronic transmission on a form  
2 approved by the department of human services to the entity  
3 designated by the department of human services, a notice of  
4 opening administration of the estate and of the appointment  
5 of the administrator, which shall include a notice to file  
6 claims with the clerk or to provide electronic notification to  
7 the administrator that the department has no claim within the  
8 ~~later to occur of four months from the second publication of~~  
9 ~~the notice to creditors or six months from the date of mailing~~  
10 ~~of sending~~ this notice, or thereafter be forever barred.

11 2. The notice shall be in substantially the following form:

12 NOTICE OF OPENING ADMINISTRATION  
13 OF ESTATE, OF APPOINTMENT OF  
14 ADMINISTRATOR, AND NOTICE  
15 TO CREDITOR

16 In the District Court of Iowa  
17 In and for ..... County.  
18 In the Estate of ....., Deceased  
19 Probate No. ....

20 To the Department of Human Services Who May Be Interested in  
21 the Estate of ....., Deceased, who died on  
22 or about ..... (date):

23 You are hereby notified that on the ..... day  
24 of..... (month), ..... (year), an intestate  
25 estate was opened in the above-named court and  
26 that ..... was appointed  
27 administrator of the estate.

28 You are further notified that the birthdate of the deceased  
29 is ..... and the deceased's social security number  
30 is .....-.....-..... The name of the  
31 spouse is ..... The birthdate of the spouse  
32 is..... and the spouse's social security number  
33 is.....-.....-....., and that the spouse  
34 of the deceased is alive as of the date of this notice, or  
35 deceased as of ..... (date).

1 You are further notified that the deceased was/was  
2 not a disabled or a blind child of the medical assistance  
3 recipient by the name of ....., who had a  
4 birthdate of ..... and a social security number  
5 of .....-.....-....., and the medical  
6 assistance debt of that medical assistance recipient was  
7 waived pursuant to section 249A.5, subsection 2, paragraph  
8 "a", subparagraph (1), and is now collectible from this estate  
9 pursuant to section 249A.5, subsection 2, paragraph "b".

10 Notice is hereby given that if the department of human  
11 services has a claim against the estate for the deceased person  
12 or persons named in this notice, the claim shall be filed with  
13 the clerk of the above-named district court, as provided by  
14 law, duly authenticated, for allowance, ~~and unless so filed by~~  
15 ~~the later to occur of four months from the second publication~~  
16 ~~of the notice to creditors or six months from the date of the~~  
17 ~~mailing of this notice~~ within six months from the date of  
18 sending this notice and, unless otherwise allowed or paid, the  
19 claim is thereafter forever barred. If the department does not  
20 have a claim, the department shall return the notice to the  
21 executor with notification stating the department does not have  
22 a claim within six months from the date of sending this notice.

23 Dated this ..... day of .....  
24 (month),..... (year)

25 .....  
26 Administrator of estate

27 .....  
28 Address

29 .....  
30 Attorney for administrator

31 .....  
32 Address

33 ~~Date of second publication~~  
34 ~~..... day of ..... (month),~~  
35 ~~..... (year)~~

1     Sec. 4. Section 633.304A, Code 2009, is amended to read as  
2 follows:

3     **633.304A Notice of probate of will — medical assistance**  
4 **claims.**

5     1. On admission of a will to probate, the executor shall,  
6 in accordance with section 633.410, provide by ~~ordinary~~  
7 ~~mail~~ electronic transmission on a form approved by the  
8 department of human services to the entity designated by the  
9 department of human services, a notice of admission of the will  
10 to probate and of the appointment of the executor, which shall  
11 include a notice to file claims with the clerk or to provide  
12 electronic notification to the executor that the department has  
13 no claim within the later to occur of four ~~six~~ months from the  
14 ~~second publication of the notice to creditors or six months~~  
15 ~~from the date of mailing of~~ sending this notice, or thereafter  
16 be forever barred.

17     2. The notice shall be in substantially the following form:

18                                 NOTICE OF PROBATE OF WILL,  
19                                 OF APPOINTMENT OF EXECUTOR,  
20                                 AND NOTICE TO CREDITORS

21 In the District Court of Iowa

22 In and for ..... County.

23 In the Estate of ....., Deceased

24 Probate No. ....

25 To the Department of Human Services, Who May Be Interested in  
26 the Estate of ....., Deceased, who died on  
27 or about ..... (date):

28 You are hereby notified that on the ..... day  
29 of..... (month), ..... (year), the last will  
30 and testament of ....., deceased,  
31 bearing date of the ..... day of .....  
32 (month),..... (year), was admitted to  
33 probate in the above-named court and  
34 that..... was appointed executor of  
35 the estate.

H.F. \_\_\_\_\_

1 You are further notified that the birthdate of the deceased  
2 is ..... and the deceased's social security  
3 number is .....-.....-..... The name of  
4 the spouse is ..... The birthdate of the spouse  
5 is ..... and the spouse's social security number  
6 is .....-.....-....., and that the spouse  
7 of the deceased is alive as of the date of this notice, or  
8 deceased as of ..... (date).

9 You are further notified that the deceased was/was  
10 not a disabled or a blind child of the medical assistance  
11 recipient by the name of ....., who had a  
12 birthdate of ..... and a social security number  
13 of .....-.....-....., and the medical  
14 assistance debt of that medical assistance recipient was  
15 waived pursuant to section 249A.5, subsection 2, paragraph  
16 "a", subparagraph (1), and is now collectible from this estate  
17 pursuant to section 249A.5, subsection 2, paragraph "b".

18 Notice is hereby given that if the department of human  
19 services has a claim against the estate for the deceased person  
20 or persons named in this notice, the claim shall be filed with  
21 the clerk of the above-named district court, as provided by  
22 law, duly authenticated, for allowance, ~~and unless so filed by~~  
23 ~~the later to occur of four months from the second publication~~  
24 ~~of the notice to creditors or six months from the date of~~  
25 mailing of this notice within six months from the date of  
26 sending this notice and, unless otherwise allowed or paid, the  
27 claim is thereafter forever barred. If the department does not  
28 have a claim, the department shall return the notice to the  
29 executor with notification that the department does not have a  
30 claim within six months from the date of sending this notice.

31 Dated this ..... day of .....  
32 (month), ..... (year)

33 .....  
34 Executor of estate  
35 .....

1                                   Address  
2 .....  
3 Attorney for executor  
4 .....  
5 Address

6 ~~Date of second publication~~  
7 ~~..... day of ..... (month),~~  
8 ~~..... (year)~~

9       Sec. 5. Section 633.356, subsection 1, Code 2009, is amended  
10 to read as follows:

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

- 23     a. Receive any particular item of tangible personal property  
24 ~~that is tangible personal property~~ of the decedent.
- 25     b. Have any ~~particular item of property that is~~ evidence  
26 of a debt, obligation, interest, right, security, or chose in  
27 action belonging to the decedent transferred.
- 28     c. Collect the proceeds from any life insurance policy or  
29 any other item of property for which a beneficiary has not been  
30 designated.

31     Sec. 6. Section 633.410, subsection 2, Code 2009, is amended  
32 to read as follows:

33     2. Notwithstanding subsection 1, claims for debts created  
34 under section 249A.5, subsection 2, relating to the recovery of  
35 medical assistance payments shall be barred under this section

1 unless filed with the clerk within ~~the later to occur of four~~  
2 ~~months after the date of the second publication of the notice~~  
3 ~~to creditors, or six months after service of sending notice by~~  
4 ~~ordinary mail~~ electronic transmission, on the form prescribed  
5 in section 633.231 for intestate estates or on the form  
6 prescribed in section 633.304A for testate estates, to the  
7 entity designated by the department of human services to  
8 receive notice.

9 Sec. 7. Section 633A.4502, subsection 2, Code Supplement  
10 2009, is amended to read as follows:

11 2. ~~This~~ The exception created in subsection 1 of  
12 this section does not apply to any trust created prior to  
13 July 1, 2002, ~~and applies to trusts created on or after~~  
14 ~~July 1, 2002, unless the settlor has specifically waived the~~  
15 ~~requirements of this section in the trust instrument. Waiver~~  
16 ~~of this section shall not bar any beneficiary's common law~~  
17 ~~right to an accounting, and shall not provide any immunity to a~~  
18 ~~trustee, acting under the terms of the trust, for liability to~~  
19 ~~any beneficiary who discovers facts giving rise to a cause of~~  
20 ~~action against the trustee.~~

21 Sec. 8. Section 633A.4604, Code 2009, is amended to read as  
22 follows:

23 **633A.4604 Certification of trust.**

24 1. A trustee may present a certification of trust to any  
25 person in lieu of providing a copy of the trust instrument to  
26 establish the ~~existence or terms of the trust~~ trust's existence  
27 or terms or the trustee's authority.

28 2. The certification must contain a statement that the trust  
29 has not been revoked, modified, or amended in any manner which  
30 would cause the representations contained in the certification  
31 of trust to be incorrect and must contain a statement that it  
32 is being signed by all of the currently acting trustees of the  
33 trust and is sworn and subscribed to under penalty of perjury  
34 before a notary public.

35 3. A certification of trust need not contain the dispositive



1 provisions of the trust which set forth the distribution of the  
2 trust estate.

3 4. A person may require that the trustee offering the  
4 certification of trust provide proof of the trustee's identity  
5 and copies of those excerpts from the original trust instrument  
6 and amendments to the original trust instrument which designate  
7 the trustee and confer upon the trustee the power to act in the  
8 pending transaction.

9 5. A person who acts in reliance upon a certification  
10 of trust ~~without~~ after taking reasonable steps to verify  
11 the identity of the trustee and without knowledge that the  
12 representations contained in the certification are incorrect  
13 is not liable to any person for so acting and may assume  
14 without inquiry the existence of the facts contained in the  
15 certification. The period of time to verify the identity of  
16 the trustee shall not exceed ten business days from the date  
17 the person received the certification of trust. Knowledge  
18 shall not be inferred solely from the fact that a copy of all or  
19 part of the trust instrument is held by the person relying upon  
20 the trust certification. A transaction, and a lien created  
21 by a transaction, entered into by the trustee and a person  
22 acting in reliance upon a certification of trust is enforceable  
23 against the trust assets.

24 6. A person making a demand for the trust instrument in  
25 addition to a certification of trust or excerpts shall be  
26 liable for damages, including attorney fees, incurred as a  
27 result of the refusal to accept the certification of trust  
28 or excerpts in lieu of the trust instrument if the court  
29 determines that the person acted unreasonably in requesting the  
30 trust instrument.

31 7. a. If a trustee has provided a certification of  
32 trust and a person refuses to pay, deliver, or transfer any  
33 property owed to or owned by the trust within a reasonable  
34 time thereafter, the trustee may bring an action under this  
35 subsection and the court may award any or all of the following

1 to the trustee:

2 (1) Any damages sustained by the trust.

3 (2) The costs of the action.

4 (3) A penalty in an amount of not less than five hundred  
5 dollars and not more than ten thousand dollars.

6 (4) Reasonable attorney fees, based on the value of the time  
7 reasonably expended by the attorney and not on the amount of  
8 the recovery on behalf of the trustee.

9 b. An action shall not be brought under this subsection more  
10 than one year after the date of the occurrence of the alleged  
11 violation.

12 ~~7.~~ 8. This section does not limit the rights of  
13 beneficiaries to obtain copies of the trust instrument or  
14 rights of others to obtain copies in a proceeding concerning  
15 the trust.

16 Sec. 9. Section 633A.6101, Code 2009, is amended to read as  
17 follows:

18 **633A.6101 Subject matter jurisdiction.**

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

27 2. Unless a trust is under continuous court supervision  
28 pursuant to section 633.10, subsection 4, the trust shall not  
29 be subject to the jurisdiction of the probate court and the  
30 court shall not issue letters of appointment.

31 Sec. 10. Section 633A.6301, subsection 4, Code 2009, is  
32 amended by striking the subsection and inserting in lieu  
33 thereof the following:

34 4. Section 633A.6301, subsection 4, Code 2009, applies to  
35 written consents executed prior to July 1, 2010.

1     Sec. 11. Section 633C.2, Code 2009, is amended to read as  
2 follows:

3     **633C.2 Disposition of medical assistance special needs**  
4 **trusts.**

5     Regardless of the terms of a medical assistance special  
6 needs trust, any income received or asset added to the trust  
7 during a one-month period shall be expended as provided for  
8 medical assistance income trusts under section 633C.3, on  
9 a monthly basis, during the life of the beneficiary. Any  
10 increase in income or principal retained in the trust from  
11 a previous month may be expended, during the life of the  
12 beneficiary, only for reasonable and necessary expenses of the  
13 trust, not to exceed ~~ten~~ fifty dollars per month without court  
14 approval, for special needs of the beneficiary attributable  
15 to the beneficiary's disability and approved by the district  
16 court, for medical care or services that would otherwise  
17 be covered by medical assistance under chapter 249A, or to  
18 reimburse the state for medical assistance paid on behalf of  
19 the beneficiary.

20     Sec. 12. Section 633C.3, subsection 1, paragraph a, Code  
21 2009, is amended to read as follows:

22     a. A reasonable amount may be paid or set aside each  
23 month for necessary expenses of the trust, not to exceed  
24 ~~ten~~ fifty dollars per month without court approval.

25     Sec. 13. Section 633C.3, subsection 2, paragraph a, Code  
26 2009, is amended to read as follows:

27     a. A reasonable amount may be paid or set aside each  
28 month for necessary expenses of the trust, not to exceed  
29 ~~ten~~ fifty dollars per month without court approval.

30     Sec. 14. Section 633C.3, subsection 3, Code 2009, is amended  
31 by adding the following new paragraph:

32     NEW PARAGRAPH. *Oa.* For a beneficiary who meets the  
33 requirements for nursing facility services and who resides in a  
34 nursing facility that provides such services, the applicable  
35 rate is the actual cost of a private pay resident of the

1 nursing facility where the beneficiary resides.

2

EXPLANATION

3 This bill relates to trusts and estates including provisions  
4 relating to state inheritance tax, uniform transfers to minors,  
5 and medical assistance claims.

6 STATE INHERITANCE TAX EXEMPTION. The bill amends Code  
7 section 450.4 to specify that a decedent's interest in  
8 an employer-sponsored retirement plan or on a decedent's  
9 individual retirement account that will be subject to federal  
10 income tax when paid to the beneficiary is not subject to state  
11 inheritance tax.

12 TRANSFERS OF PROPERTY TO MINORS. The bill raises the limit  
13 for transfers of property to minors by fiduciaries without  
14 court approval under Iowa's uniform transfers to minors Act  
15 from \$10,000 to \$25,000.

16 MEDICAL ASSISTANCE CLAIMS. The bill requires either the  
17 administrator of an intestate estate or the executor of a  
18 testate estate to electronically transmit a notice regarding  
19 the opening of the estate and of the appointment of the  
20 administrator or a notice of admission of the will to probate  
21 and of the appointment of the executor to the entity designated  
22 by the department of human services for purposes of medical  
23 assistance claims under Code section 249A.5. The bill also  
24 requires the department of human services to provide an  
25 electronic notice relating to whether the department will make  
26 a medical assistance claim against the decedent's estate within  
27 the requisite time period. The bill makes a conforming change  
28 to Code section 633.410 relating to the recovery of medical  
29 assistance payments by the department.

30 DISTRIBUTION OF PROPERTY BY AFFIDAVIT. The bill allows the  
31 distribution of property by affidavit when the gross value  
32 of the decedent's personal property that would otherwise be  
33 distributed by will or intestate succession does not exceed  
34 \$25,000.

35 DUTY TO INFORM AND ACCOUNT. The bill provides that the

1 remedies for a trustee's alleged failure to inform and account  
2 are not available for trusts created prior to July 1, 2002.

3 TRUSTS — CERTIFICATIONS. The bill provides that, for  
4 purposes of transferring property to or from a trust a transfer  
5 agent may request a certification of the existence of the trust  
6 and the identity of the trustee. The bill further provides  
7 that if a trustee has provided a certification of trust and  
8 a person refuses to pay, deliver, or transfer any property  
9 owed to or owned by the trust within a reasonable time, the  
10 trustee may bring an action and the court may award the trustee  
11 damages, costs of the action, a civil penalty, and reasonable  
12 attorney fees.

13 TRUSTS — SUBJECT MATTER JURISDICTION. The bill provides  
14 that letters of appointment are not required for trusts not  
15 under continuous court supervision under Code section 633.10,  
16 subsection 4 (jurisdiction of the district court sitting in  
17 probate relating to trusts and trustees).

18 TRUSTS — REPRESENTATION. The bill makes a provision that  
19 provides that the consent of a person who may represent and  
20 bind another person under the trust code is binding on the  
21 person represented unless the person represented objects to the  
22 representation before the consent would otherwise have become  
23 effective applicable only to written consents executed prior to  
24 July 1, 2010.

25 DISPOSITION OF MEDICAL ASSISTANCE SPECIAL NEEDS TRUSTS AND  
26 MEDICAL ASSISTANCE TRUSTS. The bill increases the reasonable  
27 amount that may be paid or set aside each month for necessary  
28 expenses of a medical assistance income trust, without court  
29 approval, from up to \$10 to up to \$50 for a beneficiary whose  
30 total monthly income is less than the average statewide charge  
31 for nursing facility services to a private-pay resident of a  
32 nursing facility.

33 The bill increases the reasonable amount that may be paid  
34 or set aside each month for necessary expenses of a medical  
35 assistance income trust, without court approval, from up to \$10

1 to up to \$50 for a beneficiary whose total monthly income is  
2 at or above the average statewide charge for nursing facility  
3 services to a private-pay resident.

4 The bill provides that, in lieu of the statewide average  
5 charge for nursing facility services, the applicable rate for  
6 a beneficiary who meets the medical assistance level of care  
7 requirements for nursing facility services and who resides in  
8 a nursing facility that provides such services is the actual  
9 cost of a private-pay resident at the nursing facility where  
10 a beneficiary resides.