

# Senate File 365 - Introduced

SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1244)

Passed Senate, Date \_\_\_\_\_ Passed House, 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 1165SV 83  
6 rh/rj/14

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1 1 Section 1. Section 614.14, subsection 6, Code 2009, is  
1 2 amended to read as follows:  
1 3 6. An interest in real estate ~~currently or previously held~~  
1 4 of record at any time by a trust shall be deemed to be held of  
1 5 record by the trustee of such trust.

1 6 Sec. 2. Section 633.40, subsection 1, Code 2009, is  
1 7 amended to read as follows:

1 8 1. COURT PRESCRIBING NOTICE. Except as otherwise provided  
1 9 in this probate code, the court shall fix the time and place  
1 10 of hearing of any matter requiring notice and shall prescribe  
1 11 ~~the time and manner of service of the notice of such hearing a~~  
1 12 ~~time for the hearing not less than twenty days after the date~~  
1 13 ~~the notice is served unless the court finds by clear and~~  
1 14 ~~convincing evidence that a shorter time period will not unduly~~  
1 15 ~~prejudice any party receiving such notice. The court shall~~  
1 16 ~~also prescribe the manner of service of the notice of such~~  
1 17 ~~hearing.~~

1 18 Sec. 3. Section 633.237, subsection 4, Code 2009, is  
1 19 amended to read as follows:

1 20 4. The notice provisions under subsections 1 and 2 are not  
1 21 applicable if the surviving spouse is a personal  
1 22 representative of the estate or a trustee of a revocable trust  
1 23 or if the surviving spouse or the spouse's conservator files,  
1 24 at any time, an election to take under the will, receive the  
1 25 intestate share, or take under the revocable trust. If the  
1 26 surviving spouse fails to file an election under this section  
1 27 within four months of the decedent's death, it shall be  
1 28 conclusively presumed that the surviving spouse elects to take  
1 29 under the will, receive the intestate share, or take under the  
1 30 revocable trust.

1 31 Sec. 4. Section 633.238, subsection 1, unnumbered  
1 32 paragraph 1, Code 2009, is amended to read as follows:

1 33 The elective share of the surviving spouse shall be limited  
1 34 to all of the following:

1 35 Sec. 5. Section 633.246, Code 2009, is amended to read as  
2 1 follows:

2 2 633.246 ELECTION NOT SUBJECT TO CHANGE.  
2 3 An election by or on behalf of a surviving spouse to take  
2 4 the share provided in ~~either~~ section ~~633.211, 633.212,~~  
2 5 ~~633.236, 633.238, or 633.240, or 633.244 hereof once made~~  
2 6 shall be binding and shall not be subject to change except for  
2 7 such causes as would justify an equitable decree for the  
2 8 rescission of a deed.

2 9 Sec. 6. Section 633.350, Code 2009, is amended to read as  
2 10 follows:

2 11 633.350 TITLE TO DECEDENT'S ESTATE == WHEN PROPERTY PASSES  
2 12 == POSSESSION AND CONTROL THEREOF == LIABILITY FOR  
2 13 ADMINISTRATION EXPENSES, DEBTS, AND FAMILY ALLOWANCE.

2 14 Except as otherwise provided in this probate code, when a  
2 15 person dies, the title to the person's property, real and

2 16 personal, passes to the person to whom it is devised by the  
2 17 person's last will, or, in the absence of such disposition, to  
2 18 the persons who succeed to the estate as provided in this  
2 19 probate code, but all of the property shall be subject to the  
2 20 possession of the personal representative as provided in  
2 21 section 633.351 and to the control of the court for the  
2 22 purposes of administration, sale, or other disposition under  
2 23 the provisions of law, and such property, except homestead and  
2 24 other exempt property, shall be chargeable with the payment of  
2 25 debts and charges against the estate. There shall be no  
2 26 priority as between real and personal property, except as  
2 27 provided in this probate code or by the will of the decedent.  
2 28 If real property is titled at any time in a decedent's estate,  
2 29 such property shall be treated as titled in the name of the  
2 30 personal representative of the estate.

2 31 Sec. 7. Section 633.376, Code 2009, is amended to read as  
2 32 follows:

2 33 633.376 ALLOWANCE TO CHILDREN WHO DO NOT RESIDE WITH  
2 34 SURVIVING SPOUSE.

2 35 1. The court may also make an allowance to a child of the  
3 1 decedent who is less than eighteen years of age or who is  
3 2 between the ages of eighteen and twenty-two years who is  
3 3 regularly attending an accredited school in pursuance of a  
3 4 course of study leading to a high school diploma or its  
3 5 equivalent, or regularly attending a course of  
3 6 vocational-technical training either as a part of a regular  
3 7 school program or under special arrangements adapted to the  
3 8 individual person's needs; or is, in good faith, a full-time  
3 9 student in a college, university, or community college; or has  
3 10 been accepted for admission to a college, university, or  
3 11 community college and the next regular term has not yet begun;  
3 12 or a child of any age who is dependent because of physical or  
3 13 mental disability; who does not reside with the surviving  
3 14 spouse, of an amount it deems reasonable in the light of the  
3 15 assets and condition of the estate, to provide for the child's  
3 16 proper support during the period of twelve months.

3 17 2. The estate's personal representative shall cause  
3 18 written notice to be mailed pursuant to section 633.40,  
3 19 subsection 5, to the legal guardian of each child qualified  
3 20 under subsection 1 and to each child who has no legal  
3 21 guardian. The notice shall inform the child and the child's  
3 22 guardian, if applicable, of the right to apply, within four  
3 23 months after service of the notice, for support for a period  
3 24 of twelve months following the decedent's death. If an  
3 25 application for support has not been filed within four months  
3 26 after service of the notice by or on behalf of the child  
3 27 qualifying for support under subsection 1, the child shall be  
3 28 deemed to have waived the right to support under this section.  
3 29 A child who qualifies for support under this section may waive  
3 30 the child's right to such support by filing an affidavit  
3 31 acknowledging receipt of notice and irrevocably waiving the  
3 32 child's right to support under this section.

3 33 Sec. 8. Section 633.639, Code 2009, is amended to read as  
3 34 follows:

3 35 633.639 TITLE TO WARD'S PROPERTY.

4 1 The title to all property of the ward is in the ward and  
4 2 not the conservator subject, however, to the possession of the  
4 3 conservator and to the control of the court for the purposes  
4 4 of administration, sale or other disposition, under the  
4 5 provisions of the law. Any real property titled at any time  
4 6 in the name of a conservatorship shall be deemed to be titled  
4 7 in the ward's name subject to the conservator's right of  
4 8 possession.

4 9 Sec. 9. Section 633A.2203, Code 2009, is amended to read  
4 10 as follows:

4 11 633A.2203 ~~MODIFICATION OR TERMINATION OF IRREVOCABLE TRUST~~  
4 12 ~~OR MODIFICATION OF DISPOSITIVE PROVISIONS OF IRREVOCABLE TRUST~~  
4 13 BY COURT.

4 14 1. An irrevocable trust may be terminated or its  
4 15 dispositive provisions modified by the court with the consent  
4 16 of all of the beneficiaries if continuance of the trust on the  
4 17 same or different terms is not necessary to carry out a  
4 18 material purpose.

4 19 2. Upon termination of the trust, the court shall order  
4 20 the distribution of trust property in accordance with the  
4 21 probable intention of the settlor.

4 22 3. For purposes of this section, the consent of a person  
4 23 who may bind a beneficiary is considered the consent of the  
4 24 beneficiary.

4 25 4. For the purposes of this section, removal of the  
4 26 trustee or the addition of a provision to the trust instrument

~~4 27 allowing a beneficiary or a group of beneficiaries to remove  
4 28 the trustee or to appoint a new trustee shall not be allowed  
4 29 as a modification under this section. This subsection shall  
4 30 not operate to limit the scope of dispositive provisions for  
4 31 the purposes of this section.~~

4 32 Sec. 10. Section 633A.4502, Code 2009, is amended to read  
4 33 as follows:

4 34 633A.4502 BREACH OF TRUST == ACTIONS.

4 35 ~~1. To Except as provided in section 633A.4213, to remedy a~~  
5 1 breach of trust which has occurred or may occur, a beneficiary  
5 2 or cotrustee of the trust may request the court to do any of  
5 3 the following:

5 4 ~~1-~~ a. Compel the trustee to perform the trustee's duties.

5 5 ~~2-~~ b. Enjoin the trustee from committing a breach of  
5 6 trust.

5 7 ~~3-~~ c. Compel the trustee to redress a breach of trust by  
5 8 payment of money or otherwise.

5 9 ~~4-~~ d. Appoint a receiver or temporary trustee to take  
5 10 possession of the trust property and administer the trust.

5 11 ~~5-~~ e. Remove the trustee.

5 12 ~~6-~~ f. Reduce or deny compensation to the trustee.

5 13 ~~7-~~ g. Subject to section 633A.4603, nullify an act of the  
5 14 trustee, impose an equitable lien or a constructive trust on  
5 15 trust property, or trace trust property wrongfully disposed of  
5 16 and recover the property or its proceeds.

5 17 ~~8-~~ h. Order any other appropriate relief.

5 18 ~~2. This section does not apply to any trust created prior~~  
5 19 ~~to July 1, 2002, and applies to trusts created on or after~~

5 20 ~~July 1, 2002, unless the settlor has specifically waived the~~  
5 21 ~~requirements of this section in the trust instrument. Waiver~~

5 22 ~~of this section shall not bar any beneficiary's common law~~

5 23 ~~right to an accounting, and shall not provide any immunity to~~

5 24 ~~a trustee, acting under the terms of the trust, for liability~~

5 25 ~~to any beneficiary who discovers facts giving rise to a cause~~  
5 26 ~~of action against the trustee.~~

5 27 Sec. 11. Section 635.8, subsection 1, unnumbered paragraph  
5 28 1, Code 2009, is amended to read as follows:

5 29 The personal representative shall file with the court a  
5 30 closing statement and proof of service thereof within a  
5 31 reasonable time from the date of issuance of the letters of  
5 32 appointment, and the closing statement shall be verified or  
5 33 affirmed under penalty of perjury, stating all of the  
5 34 following:

5 35 Sec. 12. Section 637.421, Code 2009, is amended to read as  
6 1 follows:

6 2 637.421 DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR  
6 3 PAYMENTS.

6 4 ~~1. This section applies to payments~~ For purposes of this  
6 5 ~~section, the following definitions shall apply:~~

6 6 a. "Payments" means a payment that a trustee may receive  
6 7 over a fixed number of years or during the life of one or more  
6 8 individuals because of services rendered or property  
6 9 transferred to the payor in exchange for future payments. ~~The~~

~~6 10 payments~~ "Payments" include those made in cash money or  
6 11 property from the payor's general assets or from a separate  
6 12 fund created by the payor, ~~including.~~ For purposes of

6 13 ~~subsections 4, 5, 6, and 7, "payments" also includes any~~  
6 14 ~~payment from a separate fund regardless of the reason for the~~  
6 15 ~~payment.~~

6 16 b. "Separate fund" includes a private or commercial  
6 17 annuity, an individual retirement account, and a pension,  
6 18 profit sharing, stock bonus, or stock ownership plan. ~~This~~

~~6 19 section does not apply to payments to which section 637.422~~  
6 20 ~~applies.~~

6 21 2. To the extent that a payment is characterized as  
6 22 interest, ~~or~~ a dividend or a payment made in lieu of interest  
6 23 or a dividend, ~~it must be allocated~~ a trustee shall allocate

6 24 ~~the payment to income. The trustee shall allocate to~~  
6 25 ~~principal the balance of the payment and any other payment~~

6 26 ~~received in the same accounting period that is not~~  
6 27 ~~characterized as interest, a dividend, or an equivalent~~

6 28 ~~payment must be allocated to principal.~~

6 29 3. If no part of a payment is characterized as interest, a  
6 30 dividend, or an equivalent payment, and all or part of the  
6 31 payment is required to be made, a trustee shall allocate to

6 32 income ten percent of the part that is required to be made  
6 33 during the accounting period and the balance to principal. If  
6 34 no part of a payment is required to be made or the payment

6 35 ~~received is the entire amount to which the trustee is~~  
7 1 ~~entitled, the trustee shall allocate the entire payment must~~

~~7 2 be allocated to principal. For purposes of this subsection, a~~

7 3 payment is not required to be made to the extent that the  
7 4 payment is made because the trustee exercises a right of  
7 5 withdrawal.

7 6 4. If, to obtain an estate tax marital deduction for a  
7 7 trust, a trustee must allocate more of a payment to income  
7 8 than provided for by this section, the trustee shall allocate  
7 9 to income the additional amount necessary to obtain the  
7 10 marital deduction. Except as otherwise provided in subsection  
7 11 5, subsections 6 and 7 apply, and subsections 2 and 3 do not  
7 12 apply in determining the allocation of a payment made from a  
7 13 separate fund to any of the following:

7 14 a. A trust to which an election to qualify for a marital  
7 15 deduction had been made under section 2056(b)(7) of the  
7 16 Internal Revenue Code of 1986, as amended.

7 17 b. A trust that qualifies for a marital deduction under  
7 18 section 2056(b)(5) of the Internal Revenue Code of 1986, as  
7 19 amended.

7 20 5. Subsections 4, 6, and 7 do not apply if and to the  
7 21 extent that the series of payments would, without the  
7 22 application of subsection 4, qualify for a marital deduction  
7 23 under section 2056(b)(7)(c) of the Internal Revenue Code of  
7 24 1986, as amended.

7 25 6. A trustee shall determine the internal income of each  
7 26 separate fund for the accounting period as if the separate  
7 27 fund were a trust subject to this chapter. Upon request of  
7 28 the surviving spouse, the trustee shall demand that the person  
7 29 administering the separate fund to distribute such internal  
7 30 income to the trust. The trustee shall allocate a payment  
7 31 from the separate fund to income to the extent of the internal  
7 32 income of the separate fund and distribute that amount to the  
7 33 surviving spouse. The trustee shall allocate the balance to  
7 34 principal. Upon request of the surviving spouse, the trustee  
7 35 shall allocate principal to income to the extent the internal  
8 1 income of the separate fund exceeds payments made from the  
8 2 separate fund to the trust during the accounting period.

8 3 7. If a trustee cannot determine the internal income of a  
8 4 separate fund but can determine the value of the separate  
8 5 fund, the internal income of the separate fund is deemed to  
8 6 equal four percent of the value of the fund according to the  
8 7 most recent statement of the value prior to the beginning of  
8 8 the accounting period. If the trustee is unable to determine  
8 9 the internal income of the separate fund and the fund's value,  
8 10 the internal income of the fund is deemed to equal the product  
8 11 of the interest rate and the present value of the expected  
8 12 future payments as determined pursuant to section 7520 of the  
8 13 Internal Revenue Code of 1986, as amended.

8 14 8. This section does not apply to a payment made under  
8 15 section 637.422.

8 16 Sec. 13. Section 637.505, subsections 3 and 4, Code 2009,  
8 17 are amended to read as follows:

8 18 3. A tax required to be paid by a trustee on the trust's  
8 19 share of an entity's taxable income must be paid  
8 20 proportionately, according to all of the following principles:

8 21 a. From income, to the extent that receipts from the  
8 22 entity are allocated only to income.

8 23 b. From principal, to the extent that ~~the following~~  
8 24 ~~principles are observed:~~

8 25 (1) ~~Receipts~~ receipts from the entity are allocated only  
8 26 to principal.

8 27 (2) ~~The trust's share of the entity's taxable income~~  
8 28 ~~exceeds the total receipts in paragraph "a" and in~~  
8 29 ~~subparagraph (1).~~

8 30 c. Proportionately from principal and income to the extent  
8 31 that receipts from the entity are allocated to both income and  
8 32 principal.

8 33 d. From principal to the extent that the tax exceeds the  
8 34 total receipts from the entity.

8 35 4. For purposes of this section, receipts allocated to  
9 1 principal or income shall be reduced by the amount distributed  
9 2 to a beneficiary from principal or income for which the trust  
9 3 receives a deduction in calculating the tax. After applying  
9 4 subsections 1 through 3, the trustee shall adjust income or  
9 5 principal receipts to the extent that the taxes of the trust  
9 6 are reduced because the trust receives a deduction for  
9 7 payments made to a beneficiary.

9 8 Sec. 14. APPLICABILITY AND RETROACTIVITY.

9 9 1. The section of this Act amending section 614.14 applies  
9 10 retroactively to all trusts in existence on and after July 1,  
9 11 1999.

9 12 2. The section of this Act amending section 633.40,  
9 13 subsection 1, applies to orders setting hearings entered on or

9 14 after July 1, 2009.

9 15 3. The sections of this Act amending section 633.237,  
9 16 subsection 4, section 633.238, subsection 1, and section  
9 17 633.246 apply to estates of decedents and revocable trusts of  
9 18 settlors dying on or after July 1, 2009.

9 19 4. The sections of this Act amending sections 633.350 and  
9 20 633.639 apply retroactively to conveyances occurring on or  
9 21 after July 1, 1999.

9 22 5. The sections of this Act amending sections 633.376 and  
9 23 635.8 apply to estates of decedents dying on or after July 1,  
9 24 2009.

9 25 6. The section of this Act amending section 633A.2203  
9 26 applies to all proceedings to modify dispositive provisions of  
9 27 or to terminate an irrevocable trust on or after July 1, 2009,  
9 28 regardless of the date the trust was created.

9 29 7. The sections of this Act amending sections 637.421 and  
9 30 637.505 apply as of the decedent's date of death for marital  
9 31 trusts funded beginning on or after January 1, 2009. For all  
9 32 other marital trusts, these amendments apply as of January 1,  
9 33 2009.

9 34 EXPLANATION

9 35 This bill relates to trusts and estates including the  
10 1 administration of small estates and includes retroactive and  
10 2 other applicability provisions.

10 3 The bill provides that an interest in real estate held of  
10 4 record at any time by a trust shall be deemed to be held of  
10 5 record by the trustee of such trust. This provision applies  
10 6 retroactively to all trusts in existence on or after July 1,  
10 7 1999.

10 8 The bill provides that a probate court shall prescribe a  
10 9 time for the hearing not less than 20 days after the date the  
10 10 notice in a probate proceeding is served unless the court  
10 11 finds by clear and convincing evidence that a shorter time  
10 12 period will not unduly prejudice any party receiving such  
10 13 notice. The court shall also prescribe the manner in which  
10 14 the notice shall be served. This provision applies to orders  
10 15 setting hearings entered on or after July 1, 2009.

10 16 The bill provides that the specific requirements for notice  
10 17 provisions applicable to a situation where a personal  
10 18 representative of the estate of the decedent, who is the  
10 19 spouse, is appointed, are not applicable if the surviving  
10 20 spouse or the spouse's conservator files, at any time, an  
10 21 election to take under the will, receive the intestate share,  
10 22 or take under the revocable trust. This provision applies to  
10 23 estates of decedents and revocable trusts of settlors dying on  
10 24 or after July 1, 2009.

10 25 The bill limits the elective share of the surviving spouse  
10 26 who elects to take against a decedent's will to the elective  
10 27 share portions contained in Code section 633.238 and does not  
10 28 include nonprobate or nontrust assets. This provision applies  
10 29 to estates of decedents and revocable trusts of settlors dying  
10 30 on or after July 1, 2009.

10 31 The bill adds the spousal share provisions of the probate  
10 32 code based upon the circumstances in existence at the time of  
10 33 the decedent's death to a provision relating to the elective  
10 34 share of the surviving spouse that provides that an election  
10 35 of a surviving spouse is not subject to change except for a  
11 1 situation that would justify an equitable decree for the  
11 2 recision of a deed. This provision applies to estates of  
11 3 decedents and revocable trusts of settlors dying on or after  
11 4 July 1, 2009.

11 5 The bill provides that if real property is titled at any  
11 6 time in a decedent's estate, such property shall be treated as  
11 7 titled in the name of the personal representative of the  
11 8 estate. This provision applies retroactively to conveyances  
11 9 occurring on or after July 1, 1999.

11 10 The bill provides specific notice provisions for a minor  
11 11 child or the legal guardian of a minor child of a decedent who  
11 12 does not reside with a surviving spouse of the child's right  
11 13 to request a family allowance from the decedent's estate.  
11 14 This provision applies to estates of decedents dying on or  
11 15 after July 1, 2009.

11 16 The bill provides that any real property titled at any time  
11 17 in the name of a conservatorship shall be deemed to be titled  
11 18 in the ward's name subject to the conservator's right of  
11 19 possession. This provision applies to conveyances occurring  
11 20 on or after July 1, 1999.

11 21 The bill specifies that Code section 633A.2203 applies to  
11 22 the termination of an irrevocable trust or the modification of  
11 23 the dispositive provisions of an irrevocable trust. The bill  
11 24 also specifies that Code section 633A.2203 shall not be used

11 25 to remove or replace a trustee. This provision applies to all  
11 26 proceedings to modify dispositive provisions of or to  
11 27 terminate an irrevocable trust on or after July 1, 2009,  
11 28 regardless of the date the trust was created.

11 29 The bill creates an exception for remedying a breach of  
11 30 trust which has occurred or may occur in the future. The  
11 31 exception relates generally to a trustee's duty to keep the  
11 32 qualified beneficiaries of a trust reasonably informed about  
11 33 the administration of the trust for remedying a breach of  
11 34 trust which has occurred or may occur in the future. This  
11 35 provision does not apply to any trust created prior to July 1,  
12 1 2002, and applies to trusts created on or after July 1, 2002,  
12 2 unless the settlor has specifically waived the requirements of  
12 3 Code section 633A.4502 in the trust instrument. Waiver of  
12 4 Code section 633A.4502 shall not bar a beneficiary's common  
12 5 law right to an accounting and shall not provide any immunity  
12 6 to a trustee, acting under the terms of a trust, for liability  
12 7 to any beneficiary who discovers facts giving rise to a cause  
12 8 of action against the trustee.

12 9 The bill requires a personal representative of a small  
12 10 estate to file proof of service of a closing statement. This  
12 11 provision applies to estates of decedents dying on or after  
12 12 July 1, 2009.

12 13 The bill makes changes to provisions in Iowa's uniform  
12 14 principal and income Act (UPIA, Code chapter 637), which  
12 15 generally provides certain procedures for trustees who  
12 16 administer trusts and personal representatives who administer  
12 17 estates to allocate receipts and payments to principal and  
12 18 income. The changes relate to certain payments including  
12 19 payments characterized as interest, a dividend, or an  
12 20 equivalent payment, that a trustee may receive over a fixed  
12 21 number of years or during the life of one or more individuals  
12 22 because of services rendered or property transferred to the  
12 23 payor in exchange for future payments. The changes also  
12 24 relate to income taxes required to be paid by a trustee. The  
12 25 changes to the UPIA in the bill are necessary to address  
12 26 concerns by the Internal Revenue Service that would otherwise  
12 27 disqualify certain retirement accounts from eligibility for a  
12 28 marital deduction. Such provisions apply as of the date of  
12 29 the decedent's death for marital trusts funded beginning on or  
12 30 after January 1, 2009. For all other marital trusts, such  
12 31 provisions apply on or after January 1, 2009.

12 32 LSB 1165SV 83  
12 33 rh/rj/14