

**House Study Bill 151 - Introduced**

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

**A BILL FOR**

1 An Act relating to the probate and trust codes and state  
2 inheritance tax and medical assistance claims and including  
3 applicability provisions.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 422.7, subsection 4, Code 2011, is  
2 amended by striking the subsection.

3 Sec. 2. Section 450.4, subsections 7 and 8, Code 2011, are  
4 amended by striking the subsections.

5 Sec. 3. Section 633.237, subsections 1, 2, and 4, Code 2011,  
6 are amended to read as follows:

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

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

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

12 Sec. 4. Section 633.246, Code 2011, is amended to read as  
13 follows:

14 **633.246 Election not subject to change.**

15 1. An election by or on behalf of a surviving spouse to  
16 take the share provided in section 633.211, 633.212, 633.236,  
17 633.238, 633.240, or 633.244 shall be binding and shall not be  
18 subject to change except for such causes as would justify an  
19 equitable decree for the rescission of a deed.

20 2. An affirmative election to take under the will, receive  
21 the intestate share, or take under the revocable trust shall be  
22 irrevocable when filed as provided in section 633.237.

23 Sec. 5. Section 633.374, Code 2011, is amended to read as  
24 follows:

25 **633.374 Allowance to surviving spouse.**

26 ~~1. If the personal representative of the estate is not~~  
27 ~~the decedent's spouse, the~~ The personal representative of the  
28 estate shall ~~cause written notice concerning support to be~~  
29 ~~mailed~~ mail to the surviving spouse pursuant to section 633.40,  
30 subsection 5, a written notice regarding the right to request  
31 a spousal allowance. The notice shall inform the surviving  
32 spouse of the surviving spouse's right to ~~apply,~~ submit an  
33 application to the court within four months of service of the  
34 notice, for support for a period of twelve months following  
35 the death of the decedent, and for support of the decedent's

1 dependents who reside with the spouse for the same period of  
2 time.

3 2. The court shall, upon application, set off and order  
4 paid to the surviving spouse, as part of the costs of  
5 administration, sufficient of the decedent's property including  
6 assets held in a revocable trust of which the decedent is the  
7 settlor to the extent that estate assets are not sufficient as  
8 it deems reasonable for the proper support of the surviving  
9 spouse for the period of twelve months following the death of  
10 the decedent. ~~If the application is not made by the personal~~  
11 ~~representative, notice~~ Notice of hearing upon the application  
12 shall be given to the surviving spouse, personal representative  
13 if the application is not made by the personal representative,  
14 trustee of any revocable trust of which the decedent is the  
15 settlor, and all other interested persons. The court shall  
16 take into consideration the station in life of the surviving  
17 spouse, ~~and~~ the assets and condition of the estate and any  
18 revocable trust of which the decedent is the settlor, the  
19 nonprobate assets received by the surviving spouse by reason of  
20 the death of the decedent, and the income and other resources  
21 of the surviving spouse. If the trustee of a revocable  
22 trust of which the decedent was a settlor has previously made  
23 payments under section 633A.3114 to the spouse, the court shall  
24 reduce the award by the amount of such payments. The allowance  
25 shall also include such additional amount as the court deems  
26 reasonable for the proper support, during such period, of  
27 dependents of the decedent who reside with the surviving  
28 spouse. Such allowance to the surviving spouse shall not abate  
29 upon the death or remarriage of such spouse. If an application  
30 for support has not been filed within four months following  
31 service of the notice by or on behalf of the surviving  
32 spouse and the dependents of the decedent who reside with the  
33 surviving spouse, the surviving spouse and the dependents of  
34 the decedent shall be deemed to have waived the right to apply  
35 for support during the administration of the estate.

1     3. A surviving spouse who qualifies for a support allowance  
2 under this section may waive the right to such allowance for  
3 the surviving spouse and for the dependents of the decedent  
4 who reside with the surviving spouse by filing an affidavit  
5 acknowledging receipt of notice and irrevocably waiving the  
6 right to support under this section.

7     Sec. 6. Section 633.375, Code 2011, is amended to read as  
8 follows:

9     **633.375 Review of allowance to surviving spouse.**

10     The court may, upon the petition of ~~the spouse, or other~~  
11 ~~person interested~~ any interested person, and after hearing  
12 pursuant to notice to all interested parties, review ~~such the~~  
13 allowance and increase or decrease the ~~same amount and make~~  
14 such other orders as it may deem proper.

15     Sec. 7. Section 633.376, Code 2011, is amended to read as  
16 follows:

17     **633.376 Allowance to children who do not reside with**  
18 **surviving spouse.**

19     1. The court may also make an allowance under the same terms  
20 and conditions as provided in section 633.374 of an amount the  
21 court deems reasonable in light of the assets and condition of  
22 the estate, to provide for proper support during the period of  
23 twelve months following the decedent's death to a child of the  
24 decedent who does not reside with the surviving spouse and is  
25 any of the following:

26     a. less Less than eighteen years of age.

27     b. or who is between Between the ages of eighteen and  
28 twenty-two years who is any of the following:

29     (1) regularly Regularly attending an accredited school in  
30 pursuance of a course of study leading to a high school diploma  
31 or its equivalent.

32     (2) or regularly Regularly attending a course of  
33 vocational-technical training either as a part of a regular  
34 school program or under special arrangements adapted to the  
35 individual person's needs.

1     ~~(3) or is~~ Is, in good faith, a full-time student in a  
2 college, university, or community college~~;~~.

3     ~~(4) or has~~ Has been accepted for admission to a college,  
4 university, or community college and the next regular term has  
5 not yet begun~~;~~.

6     ~~c. or~~ Is a child of any age who is dependent because of  
7 physical or mental disability~~;~~ ~~who does not reside with the~~  
8 ~~surviving spouse, of an amount it deems reasonable in the light~~  
9 ~~of the assets and condition of the estate, to provide for the~~  
10 ~~child's proper support during the period of twelve months.~~

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

30     Sec. 8. Section 633.377, Code 2011, is amended to read as  
31 follows:

32     **633.377 Review of allowance to minor children.**

33     The court may, upon the petition of any interested person,  
34 and after hearing pursuant to notice to all interested parties,  
35 review the allowance made to the minor children who do not

1 reside with the surviving spouse and may increase or decrease  
2 the ~~same~~ amount and make such other orders as it may deem  
3 proper.

4 Sec. 9. Section 633.471, Code 2011, is amended to read as  
5 follows:

6 **633.471 Right of retainer.**

7 When a distributee of an estate is indebted to the estate,  
8 or if a distributee takes as an heir of a deceased devisee  
9 indebted to the estate, the amount of such indebtedness, if  
10 due, or the present worth of the indebtedness, if not due,  
11 shall be treated as a setoff and retained by the personal  
12 representative out of any testate or intestate property,  
13 real or personal, of the estate to which such distributee is  
14 entitled. In intestate estates, the personal representative  
15 shall have the same right of setoff and retainer against an  
16 heir whose ancestor was indebted to the estate. The right of  
17 setoff and retainer shall be prior and superior to the rights  
18 of judgment creditors, heirs or assigns of such distributee ~~and~~  
19 ~~shall not be barred by the statute of limitations, nor by a~~  
20 ~~discharge in bankruptcy.~~

21 Sec. 10. Section 633.561, Code 2011, is amended by adding  
22 the following new subsection:

23 NEW SUBSECTION. 7. If the court determines upon application  
24 that it is appropriate or necessary, the court may order that  
25 the attorney appointed pursuant to this section be given copies  
26 of and access to the proposed ward's health information by  
27 describing with reasonable specificity the health information  
28 to be disclosed or accessed, for the purpose of fulfilling the  
29 attorney's responsibilities pursuant to this section.

30 Sec. 11. Section 633A.2203, Code 2011, is amended by adding  
31 the following new subsection:

32 NEW SUBSECTION. 5. A spendthrift provision, or a provision  
33 giving the trustee discretion to distribute income or principal  
34 to a beneficiary or among beneficiaries, in the terms of the  
35 trust is presumed to constitute a material purpose of the

1 trust.

2 Sec. 12. Section 633A.3104, subsection 2, Code 2011, is  
3 amended by striking the subsection and inserting in lieu  
4 thereof the following:

5 2. Following the death of a settlor, if the settlor's estate  
6 is inadequate to satisfy the debts of the settlor and the  
7 charges of the settlor's estate, the property of a revocable  
8 trust, to the extent of the value of the property over which  
9 the settlor had a power of revocation, is subject to all of the  
10 following:

11 a. The charges of the settlor's estate.

12 b. The debts of the settlor unless barred as provided in  
13 section 633A.3109.

14 Sec. 13. Section 633A.3104, Code 2011, is amended by adding  
15 the following new subsection:

16 NEW SUBSECTION. 2A. The personal representative of the  
17 settlor's estate shall submit a statement to the trustee  
18 within the period for filing claims against the trust of the  
19 amount by which the assets of the estate are insufficient  
20 to pay the debts and charges. Subject to the provisions of  
21 section 633A.3111, the trustee shall remit to the personal  
22 representative the amount needed to pay the charges and shall  
23 pay the debts directly to the creditors unless the trustee and  
24 personal representative agree to a different manner of payment.

25 Sec. 14. Section 633A.3108, Code 2011, is amended by  
26 striking the section and inserting in lieu thereof the  
27 following:

28 **633A.3108 Limitation on contest of revocable trust.**

29 Unless previously barred by adjudication, consent, or other  
30 limitation, if notice is published or given as provided in  
31 section 633A.3110 within one year of the settlor's death, a  
32 proceeding to contest the validity of a revocable trust must be  
33 brought within the period specified in that notice. If notice  
34 is not published or given within that period, a proceeding to  
35 contest the validity of a trust must be brought no later than

1 one year following the death of the settlor.

2 Sec. 15. Section 633A.3109, Code 2011, is amended by  
3 striking the section and inserting in lieu thereof the  
4 following:

5 **633A.3109 Limitation on creditor rights against revocable**  
6 **trust assets after settlor's death.**

7 1. If notice is published or given as provided in section  
8 633A.3110 within one year of the settlor's death, any claim  
9 against the trust assets will be forever barred unless the  
10 creditor files a claim as provided for and within the period  
11 specified in the notice.

12 2. If notice is not published or given, a creditor of  
13 a deceased settlor of a revocable trust must bring suit to  
14 enforce its claim against the assets of the decedent's trust  
15 within one year of the decedent's death or be forever barred  
16 from collecting against the trust assets. The one-year  
17 limitation period shall not be extended by the commencement of  
18 probate administration for the settlor.

19 3. The notice under sections 633.230 and 633.304 in probate  
20 of the settlor's estate does not affect a creditor's claim  
21 under this section.

22 Sec. 16. Section 633A.3110, Code 2011, is amended by  
23 striking the section and inserting in lieu thereof the  
24 following:

25 **633A.3110 Notice to creditors, heirs, and spouse.**

26 1. As used in this section, "heir" means only such person  
27 who would, in an intestate estate, be entitled to a share under  
28 section 633.219.

29 2. The trustee may give notice as described herein to  
30 creditors, heirs, and the surviving spouse of the settlor for  
31 the purpose of establishing their rights to contest the trust  
32 and to file claims against the trust assets.

33 a. No later than the end of the one-year period beginning  
34 with the settlor's date of death, the trustee may publish a  
35 notice once each week for two consecutive weeks in a daily or

1 weekly newspaper of general circulation published in the county  
2 in which the settlor was a resident at the time of death. If  
3 the settlor was not a resident of Iowa, but the principal place  
4 of administration is in Iowa, the trustee shall publish notice  
5 in the county that is the principal place of administration  
6 pursuant to section 633A.6102.

7 *b.* If notice is published pursuant to paragraph "a", the  
8 trustee shall also give notice by ordinary mail within one year  
9 of the settlor's death to the surviving spouse and the heirs of  
10 the decedent whose identities are reasonably ascertainable, at  
11 such person's last known address.

12 *c.* If notice is published pursuant to paragraph "a", the  
13 trustee shall also give notice to creditors of the settlor who  
14 are known or reasonably ascertainable within the period for  
15 filing claims specified in the published notice and who the  
16 trustee believes own or possess a claim, which will not or may  
17 not be paid or otherwise satisfied during the administration of  
18 the trust, by ordinary mail to each person at the person's last  
19 known address.

20 *d.* The notices described in this subsection shall, if given,  
21 include notification of the settlor's death, and the fact that  
22 any action to contest the validity of the trust must be brought  
23 within the later to occur of four months from the date of the  
24 second publication of the notice made pursuant to paragraph "a"  
25 or thirty days from the date of mailing of the notice pursuant  
26 to paragraph "b", and that any claim against the trust assets  
27 will be forever barred unless proof of a creditor's claim  
28 is mailed to the trustee by certified mail, return receipt  
29 requested, within the later to occur of four months from the  
30 second publication of notice pursuant to paragraph "a" or  
31 thirty days from the date of mailing the notice pursuant to  
32 paragraph "b", if required. A person who is not entitled to  
33 receive a mailed notice or who does not make a claim within the  
34 appropriate period is forever barred from asserting any claim  
35 against the trust or the trust assets.

1 3. If notice is published pursuant to paragraph "a", claims  
2 of creditors that are discovered or which become reasonably  
3 ascertainable after the end of the notice period are barred.

4 4. If notice is not published and given as provided in  
5 this section, the right to challenge the trust and file claims  
6 against the trust assets are limited as provided in sections  
7 633A.3108 and 633A.3109.

8 5. The notice described in subsection 2 shall be  
9 substantially in the following form:

10 To all persons regarding ....., deceased, who died on  
11 or about ....., (year) ..... You are hereby notified that  
12 ..... is the trustee of the ..... Trust.

13 Any action to contest the validity of the trust must be  
14 brought in the District Court of .... County, Iowa, within  
15 the later to occur of four months from the date of second  
16 publication of this notice, or thirty days from the date of  
17 mailing this notice to all heirs of the decedent settlor  
18 and the spouse of the decedent settlor whose identities are  
19 reasonably ascertainable. Any suit not filed within this  
20 period shall be forever barred.

21 Notice is further given that any person or entity possessing  
22 a claim against the trust must mail proof of the claim to the  
23 trustee at the address listed below via certified mail, return  
24 receipt requested, by the later to occur of four months from  
25 the second publication of this notice or thirty days from the  
26 date of mailing this notice if required, or the claim shall be  
27 forever barred, unless paid or otherwise satisfied.

28 Dated this ..... day of ....., (year)....

29 ..... Trust

30 .....

31 Trustee

32 Address: .....

33 .....

34 Date of second publication ... day of ....., (year) ....

35 6. The proof of claim must be in writing stating the party's

1 name and address and describing the nature and amount of the  
2 claim, if ascertainable, and accompanied by an affidavit of the  
3 party or a representative of the party verifying the amount  
4 that is due, or when the amount will become due, that no  
5 payments have been made on the claim that are not credited, and  
6 that no offsets to the claim exist.

7 7. At any time after receipt by the trustee of a proof of  
8 claim, the trustee may give the party submitting the claim a  
9 written notice of disallowance of the claim. The notice shall  
10 be given by certified mail, return receipt requested, addressed  
11 to the party at the address stated in the claim, and to the  
12 attorney of record of the party submitting the claim. Such  
13 notice of disallowance shall advise the party submitting the  
14 claim that the claim has been disallowed and will be forever  
15 barred unless suit is filed against the trustee to enforce  
16 the claim within thirty days of the date of the mailing of  
17 the notice of disallowance. If suit is filed, the provisions  
18 in chapter 633 relating to actions to enforce a claim shall  
19 apply with the trust and trustee substituted for the estate and  
20 personal representative.

21 8. The trustee and creditor may agree to extend the  
22 limitations period for filing an action to enforce the claim.  
23 If the creditor fails to properly file its claim within the  
24 established time period or bring an action to enforce its claim  
25 within the established time period, the creditor's claim shall  
26 be forever barred.

27 9. The trustee shall give notice to the beneficiaries of the  
28 trust as required by section 633A.4213.

29 10. The trustee shall give notice to the spouse of the right  
30 to elect to take an elective share of the trust as required  
31 by section 633.237 and the right to a spousal allowance as  
32 required by section 633A.3114.

33 11. The trustee shall give notice to eligible children  
34 not residing with the surviving spouse of their right to an  
35 allowance as required by section 633A.3115.

1     Sec. 17. Section 633A.3111, Code 2011, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4     **633A.3111 Rights of trustee regarding claims in a probate**  
5 **administration.**

6     1. If administration of an estate is commenced in which a  
7 revocable trust or a trust in which a holder had at the date  
8 of the holder's death a presently exercisable general power  
9 of appointment could be held responsible for the payment of  
10 debts of the settlor or holder and the charges of the settlor's  
11 or holder's estate, the trustee of the trust shall be an  
12 interested party in the administration of the estate.

13     2. The trustee shall receive notice of all potential claims  
14 against the trust assets from the personal representative of  
15 the estate and must either authorize the payments for which  
16 the trust may be found liable or be given the opportunity to  
17 dispute or defend any such payment.

18     3. If debts of the settlor are paid from trust property,  
19 the trustee or trust beneficiaries shall have a right to be  
20 reimbursed from the settlor's estate for such payment until the  
21 final report of the settlor's estate has been approved, unless  
22 the debts have been barred from being collected from the estate  
23 by notice pursuant to section 633.230 or 633.304.

24     Sec. 18. Section 633A.3112, Code 2011, is amended by  
25 striking the section and inserting in lieu thereof the  
26 following:

27     **633A.3112 Trustee's liability for distributions.**

28     1. A trustee who distributes trust assets without making  
29 adequate provisions for the payment of debts and charges that  
30 are known or reasonably ascertainable at the time of the  
31 distribution shall be jointly and severally liable with the  
32 beneficiaries to the extent of the distributions made.

33     2. A trustee shall be entitled to indemnification from the  
34 beneficiaries for all amounts paid for debts and charges under  
35 this section, to the extent of distributions made.

1     Sec. 19. NEW SECTION.   **633A.3113 Definitions — revocable**  
2 **trusts.**

3     As used in this subchapter:

4     1. "*Charges*" means the same as defined in section 633.3.

5     2. "*Costs of administration*" means the same as defined in  
6 section 633.3.

7     3. "*Debts*" means the same as defined in section 633.3.

8     Sec. 20. NEW SECTION.   **633A.3114 Allowance to surviving**  
9 **spouse.**

10    1. Unless a personal representative has been appointed  
11 for the settlor's estate, following the death of a settlor of  
12 a revocable trust, the trustee of such revocable trust shall  
13 mail a written notice to the surviving spouse pursuant to  
14 section 633.40, subsection 5, notifying the surviving spouse  
15 of the surviving spouse's right to submit an application to  
16 the trustee, within four months of service of the notice, for  
17 a support allowance for a period of twelve months following  
18 the death of the settlor, and for a support allowance for the  
19 settlor's dependents who reside with the spouse for the same  
20 period of time.

21    2. Upon receipt of an application for a support allowance,  
22 the trustee may set off and pay to the surviving spouse a  
23 sufficient amount of trust assets the trustee deems reasonable  
24 for the proper support of the surviving spouse for the period  
25 of twelve months following the death of the settlor. The  
26 trustee shall take into consideration the station of life  
27 of the settlor's surviving spouse, the assets and condition  
28 of the trust, the probate and nonprobate assets received by  
29 the surviving spouse by reason of the settlor's death, and  
30 the income and other resources of the surviving spouse. The  
31 allowance may also include such additional amount as the  
32 trustee deems reasonable for the proper support, during such  
33 period, of the dependents of the settlor who reside with the  
34 surviving spouse. If an application for a support allowance  
35 has not been filed within four months following service of

1 the notice by or on behalf of the surviving spouse and the  
2 dependents of the settlor who reside with the surviving spouse,  
3 the surviving spouse and dependents of the settlor shall  
4 be deemed to have waived the right to apply for a support  
5 allowance during the administration of the trust.

6 3. A surviving spouse who qualifies for a support allowance  
7 under this section may waive the right to such allowance  
8 for the surviving spouse and for the dependents of the  
9 settlor who reside with the surviving spouse by submitting an  
10 affidavit with the trustee acknowledging receipt of notice  
11 and irrevocably waiving the right to an allowance under this  
12 section.

13 4. The opening of an estate for the settlor shall terminate  
14 the right of the surviving spouse to apply for a spousal  
15 allowance from the trustee of the settlor's revocable trust or  
16 to receive additional support payments from the trust unless  
17 the personal representative consents to a continuation of the  
18 support payments. If a spousal allowance has been paid from  
19 trust assets, the trustee or trust beneficiaries shall have  
20 a right subject to court approval to be reimbursed from the  
21 settlor's estate for such payment until the final report of the  
22 settlor's estate has been approved.

23 **Sec. 21. NEW SECTION. 633A.3115 Allowance to children who**  
24 **do not reside with surviving spouse.**

25 1. If the trustee is required to give notice under section  
26 633A.3114, the trustee shall also mail, pursuant to section  
27 633.40, subsection 5, to the legal guardian of each child  
28 qualified under subsection 2 and to each such child or the  
29 guardian ad litem for such child if necessary, who has no legal  
30 guardian, a written notice regarding the right to request an  
31 allowance. The notice shall inform the child and the child's  
32 guardian, if applicable, of the right to submit an application  
33 to the trustee within four months after service of the notice,  
34 for a support allowance for a period of twelve months following  
35 the decedent's death.

1     2. Upon receipt of an application for a support allowance,  
2 the trustee may make an allowance of an amount the trustee  
3 deems reasonable in light of the assets and condition of the  
4 trust, to provide for proper support during the period of  
5 twelve months following the decedent's death to a child of  
6 the decedent who does not reside with the settlor's surviving  
7 spouse and is any of the following:

8     *a.* Less than eighteen years of age.

9     *b.* Between the ages of eighteen and twenty-two years who is  
10 any of the following:

11     (1) Regularly attending an accredited school in pursuance  
12 of a course of study leading to a high school diploma or its  
13 equivalent.

14     (2) Regularly attending a course of vocational-technical  
15 training either as a part of a regular school program or under  
16 special arrangements adapted to the individual person's needs.

17     (3) Is, in good faith, a full-time student in a college,  
18 university, or community college.

19     (4) Has been accepted for admission to a college,  
20 university, or community college and the next regular term has  
21 not yet begun.

22     *c.* Is a child of any age and dependent because of physical  
23 or mental disability.

24     3. If an application for a support allowance has not  
25 been filed within four months after service of the notice  
26 by or on behalf of the child qualifying for an allowance  
27 under subsection 2, the child shall be deemed to have waived  
28 the right to an allowance under this section. A child who  
29 qualifies for an allowance under this section or the guardian  
30 for the child, if any, may waive the child's right to such  
31 an allowance by submitting an affidavit to the trustee  
32 acknowledging receipt of notice and irrevocably waiving the  
33 child's right to an allowance under this section.

34     4. The opening of an estate for the settlor shall  
35 terminate the right of a child to apply for an allowance from

1 the trustee of the settlor's revocable trust or to receive  
2 additional support payments from the trust unless the personal  
3 representative consents to a continuation of support payments.  
4 If an allowance has been paid from trust assets, the trustee  
5 or trust beneficiaries shall have a right to be reimbursed  
6 subject to court approval from the settlor's estate for such  
7 payment until the final report of the settlor's estate has been  
8 approved.

9 Sec. 22. Section 633A.4213, subsection 5, Code 2011, is  
10 amended by striking the subsection and inserting in lieu  
11 thereof the following:

12 5. *a.* If the trustee has refused, after written request,  
13 to provide an accounting or other required notice under this  
14 section to a qualified beneficiary, the court may do any of the  
15 following:

16 (1) Order the trustee to comply with the trustee's duties  
17 under this section.

18 (2) Assess costs, including attorney fees, against the  
19 trustee personally.

20 *b.* Except as provided in paragraph "a", the only consequence  
21 to a trustee's failure to provide the required accounting or  
22 notice is that the trustee shall not be able to rely upon the  
23 statute of limitations under section 633A.4504.

24 Sec. 23. Section 633A.4504, Code 2011, is amended to read  
25 as follows:

26 **633A.4504 Limitation of action against trustee.**

27 1. Unless previously barred by adjudication, consent,  
28 or other limitation, a claim against a trustee for breach of  
29 trust is barred as to a beneficiary who has received a ~~final~~  
30 ~~account~~ an accounting pursuant to section 633A.4213 or other  
31 report that adequately disclosing discloses the existence  
32 of the claim, unless a proceeding to assert the claim is  
33 commenced within one year after the ~~earlier of the receipt~~  
34 ~~of the accounting or report of the termination of the trust~~  
35 ~~relationship between the trustee and beneficiary.~~ An account

1 accounting or report adequately discloses the existence of  
2 a claim if it provides sufficient information so that the  
3 beneficiary knows of the claim or reasonably should have  
4 inquired into its existence.

5 2. For the purpose of subsection 1, a beneficiary is  
6 deemed to have received an ~~account~~ accounting or report in the  
7 following instances:

8 a. In the case of an adult who is reasonably capable of  
9 understanding the ~~account~~ accounting or report, if it is  
10 received by the adult personally.

11 b. In the case of an adult who is not reasonably capable  
12 of understanding the ~~account~~ accounting or report, if it is  
13 received by the adult's legal representative, including a  
14 guardian ad litem or other person appointed for this purpose.

15 c. In the case of a minor, if it is received by the minor's  
16 guardian or conservator or, if the minor does not have a  
17 guardian or conservator, if it is received by a parent of the  
18 minor who does not have a conflict of interest.

19 3. Any claim for breach of trust against a trustee who has  
20 presented a ~~final~~ an accounting or report to a beneficiary more  
21 than one year prior to July 1, ~~2000~~ 2011, shall be time barred  
22 unless some exception stated in this section applies which  
23 tolls the statute. Any claim arising under this section within  
24 one year of July 1, ~~2000~~ 2011, shall be time barred after one  
25 year unless an exception applies to toll the statute.

26 4. For the purposes of this section, "report" means a  
27 document including but not limited to a letter, delivered by or  
28 on behalf of the trustee to a beneficiary of the trust.

29 **Sec. 24. NEW SECTION. 633A.4606 Interest as general**  
30 **partner.**

31 1. Except as otherwise provided in subsection 3 or unless  
32 personal liability is imposed in the contract, a trustee who  
33 holds an interest as a general partner in a general or limited  
34 partnership is not personally liable on a contract entered  
35 into by the partnership after the trust's acquisition of

1 the interest if the fiduciary capacity was disclosed in the  
2 contract or in a statement previously filed pursuant to section  
3 486A.303 or 488.201.

4 2. Except as otherwise provided in subsection 3, a  
5 trustee who holds an interest as a general partner is not  
6 personally liable for torts committed by the partnership or for  
7 obligations arising from ownership or control of the interest  
8 unless the trustee is personally at fault.

9 3. The immunity provided by this section does not apply  
10 if an interest in the partnership is held by the trustee in a  
11 capacity other than that of trustee or is held by the trustee's  
12 spouse or one or more of the trustee's descendants, siblings,  
13 or parents, or the spouse of any of the trustee's descendants,  
14 siblings, or parents.

15 4. If the trustee of a revocable trust holds an interest as  
16 a general partner, the settlor shall be personally liable for  
17 contracts and other obligations of the partnership as if the  
18 settlor were a general partner.

19 Sec. 25. Section 633C.2, Code 2011, is amended to read as  
20 follows:

21 **633C.2 Disposition of medical assistance special needs**  
22 **trusts.**

23 Regardless of the terms of a medical assistance special  
24 needs trust, any income received or asset added to the trust  
25 during a one-month period shall be expended as provided for  
26 medical assistance income trusts under section 633C.3, on  
27 a monthly basis, during the life of the beneficiary. Any  
28 increase in income or principal retained in the trust from  
29 a previous month may be expended, during the life of the  
30 beneficiary, only for reasonable and necessary expenses of the  
31 trust, not to exceed ~~ten~~ fifty dollars per month without court  
32 approval, for special needs of the beneficiary attributable  
33 to the beneficiary's disability and approved by the district  
34 court, for medical care or services that would otherwise  
35 be covered by medical assistance under chapter 249A, or to

1 reimburse the state for medical assistance paid on behalf of  
2 the beneficiary.

3 Sec. 26. Section 633C.3, subsection 1, unnumbered paragraph  
4 1, Code 2011, is amended to read as follows:

5 Regardless of the terms of a medical assistance income  
6 trust, if the beneficiary's total monthly income is less than  
7 one hundred twenty-five percent of the average statewide charge  
8 for nursing facility services to a private pay resident of a  
9 nursing facility, then, during the life of the beneficiary,  
10 any property received or held by the trust shall be expended  
11 only as follows, as applicable, and in the following order of  
12 priority:

13 Sec. 27. Section 633C.3, subsection 1, paragraph a, Code  
14 2011, is amended to read as follows:

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

18 Sec. 28. Section 633C.3, subsection 2, unnumbered paragraph  
19 1, Code 2011, is amended to read as follows:

20 Regardless of the terms of a medical assistance income  
21 trust, if the beneficiary's total monthly income is at or above  
22 one hundred twenty-five percent of the average statewide charge  
23 for nursing facility services to a private-pay resident, then,  
24 during the life of the beneficiary, any property received  
25 or held by the trust shall be expended only as follows, as  
26 applicable, in the following order of priority:

27 Sec. 29. Section 633C.3, subsection 2, paragraph a, Code  
28 2011, is amended to read as follows:

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

32 Sec. 30. Section 633C.3, subsection 3, paragraph a, Code  
33 2011, is amended by striking the paragraph.

34 Sec. 31. APPLICABILITY.

35 1. The sections of this Act amending sections 422.7, 450.4,

1 633.237, 633.246, 633.374, 633.375, 633.376, 633.377 and  
2 633.471 apply to estates of decedents dying on or after July  
3 1, 2011.

4 2. The section of this Act amending section 633.561 applies  
5 to all judicial proceedings on or after July 1, 2011, in which  
6 an order for the appointment of a guardian is sought or has  
7 been issued.

8 3. The sections of this Act amending or enacting sections  
9 633A.3104, 633A.3108, 633A.3109, 633A.3110, 633A.3112,  
10 633A.3113, 633A.3114, and 633A.3115 apply to trusts of settlors  
11 dying on or after July 1, 2011.

12 4. The sections of this Act amending or enacting sections  
13 633A.2203, 633A.4606, 633C.2, and 633C.3 apply to trusts in  
14 existence on or after July 1, 2011.

15 EXPLANATION

16 This bill relates to the probate and trust codes and state  
17 inheritance tax and medical assistance claims and includes  
18 applicability provisions.

19 TAXATION OF RETIREMENT PLAN BENEFITS — STATE INHERITANCE  
20 TAX EXEMPTION. The bill repeals provisions in Code sections  
21 422.7 and 450.4 to make conforming changes relating to the  
22 exclusion of retirement plan benefits from state inheritance  
23 taxes when paid to a beneficiary, consistent with changes to  
24 the state inheritance tax statute (Code section 450.4(5)) in  
25 H.F. 2483 (2010) (decedent's interest in an employer-sponsored  
26 retirement plan or on a decedent's individual retirement  
27 account that will be subject to federal income tax when paid to  
28 the beneficiary not subject to state inheritance tax). This  
29 provision applies to estates of decedents dying on or after  
30 July 1, 2011.

31 SPOUSAL ELECTIVE SHARE NOTICES. The bill amends current law  
32 relating to notice and time requirements concerning a surviving  
33 spouse's right to take an elective share of a decedent's  
34 estate. The bill also provides that an affirmative election to  
35 take under the will, receive the intestate share, or take under

1 the revocable trust is an irrevocable action. These provisions  
2 apply to estates of decedents dying on or after July 1, 2011.

3 SUPPORT ALLOWANCES FROM DECEDENTS' ESTATES. The bill  
4 requires that spousal elective share and support allowance  
5 notices be mailed to a decedent's spouse even if the spouse  
6 is a personal representative, specifies that the surviving  
7 spouse may submit an application to the court to exercise the  
8 surviving spouse's rights, permits the use of a decedent's (if  
9 a settlor) revocable trust assets to pay support allowances  
10 if the settlor's estate assets are insufficient, requires the  
11 court to consider the settlor's revocable trust assets and  
12 other income and assets available to the spouse in determining  
13 spousal allowance amounts, allows surviving spouses and any  
14 dependent of the settlor to irrevocably waive the right to  
15 support allowances, and allows the court to reduce a support  
16 allowance if the surviving spouse has received support  
17 allowance payments from the decedent's revocable trust. These  
18 provisions apply to estates of decedents dying on or after July  
19 1, 2011.

20 ESTATE SUPPORT ALLOWANCES — DECEDENT'S SURVIVING SPOUSE  
21 AND MINOR CHILDREN. The bill provides consistent hearing  
22 notice requirements and court authority to increase or decrease  
23 support allowances previously awarded by the court for both a  
24 decedent's surviving spouse and a decedent's minor children.  
25 These provisions apply to estates of decedents dying on or  
26 after July 1, 2011.

27 PERSONAL REPRESENTATIVE — RIGHT OF RETAINER. Current law  
28 provides that when a distributee of an estate is indebted to  
29 the estate, the personal representative is authorized to treat  
30 the amount of the debt as a setoff and to retain the debt out  
31 of any property of the estate to which the distributee is  
32 entitled. In intestate estates, the personal representative  
33 shall have the same right of setoff and retainer against an  
34 heir whose ancestor was indebted to the estate. The right  
35 of setoff and retainer is prior and superior to the rights

1 of judgment creditors or heirs of the distributee and is not  
2 barred by the statute of limitations or by a discharge in  
3 bankruptcy. The bill amends this provision to provide that the  
4 right of setoff and retainer is barred for debts extinguished  
5 by a statute of limitations or by a discharge in bankruptcy.  
6 This provision applies to estates of decedents dying on or  
7 after July 1, 2011.

8 GUARDIANSHIP PROCEEDINGS — APPOINTED ATTORNEY ACCESS TO  
9 HEALTH INFORMATION. The bill provides that if the court  
10 determines it would be in a ward's best interest to have legal  
11 representation with respect to guardianship proceedings, the  
12 court may order that the attorney appointed be given copies  
13 of and access to the proposed ward's health information by  
14 describing with reasonable specificity the health information  
15 to be disclosed or accessed, for the purpose of fulfilling the  
16 attorney's responsibilities. This provision applies to all  
17 judicial proceedings in which an order for the appointment of a  
18 guardian is sought or has been issued on or after July 1, 2011.

19 MODIFICATION OR TERMINATION OF IRREVOCABLE TRUSTS. The bill  
20 provides that, in a proceeding by a beneficiary to terminate or  
21 modify a trust, a spendthrift provision or a provision giving  
22 the trustee discretion to distribute income or principal to a  
23 beneficiary or among beneficiaries in the terms of a trust is  
24 presumed to be a material purpose of the trust. This provision  
25 applies to trusts in existence on or after July 1, 2011.

26 REVOCABLE TRUSTS — CLAIMS — LIMITATIONS — NOTICE. The  
27 bill provides that, following the death of a settlor, if the  
28 settlor's estate is inadequate to satisfy the debts and charges  
29 of the settlor's estate, the property of a revocable trust, to  
30 the extent of the value of the property over which the settlor  
31 had a power of revocation, is subject to the charges and debts  
32 of the settlor's estate unless otherwise barred.

33 The bill provides that, unless previously barred, if notice  
34 is published or given within one year of the settlor's death, a  
35 proceeding to contest the validity of a revocable trust must be

1 brought within the period specified in that notice. If notice  
2 is not published or given within that period, then a proceeding  
3 to contest the validity of a trust must be brought no later  
4 than one year following the death of the settlor.

5 The bill provides that, in regards to limitations on  
6 creditor rights against revocable trust assets after a  
7 settlor's death, if notice is published or given within one  
8 year of the settlor's death, any claim against the trust assets  
9 is barred unless the creditor files a claim as provided for  
10 and within the period specified in the notice. If notice is  
11 not published or given, a creditor of a deceased settlor of a  
12 revocable trust must bring suit to enforce its claim against  
13 the assets of the decedent's trust within one year of the  
14 decedent's death or be forever barred from collecting against  
15 the trust assets.

16 The bill provides that the trustee shall receive notice of  
17 all potential claims against the trust assets from the personal  
18 representative of the estate. In addition, if the settlor's  
19 debts are paid from trust property, the trustee or trust  
20 beneficiaries have a right to be reimbursed from the settlor's  
21 estate until the final report of that estate has been approved,  
22 unless the debts have been barred from collection by the estate  
23 under notice provisions pursuant to Code section 633.230 or  
24 633.304.

25 The bill makes the terms "charges", "costs of  
26 administration", and "debts" consistent between the probate  
27 code and the trust code.

28 The bill creates new Code section 633A.3110 (relating to  
29 notice to creditors, heirs, and the surviving spouse of the  
30 settlor) which incorporate many of the provisions of existing  
31 Code section 633A.3109 (relating to notice to creditors,  
32 claimants, heirs, spouse, and beneficiaries), repealed and  
33 replaced in the bill. This new Code section provides that  
34 trustees shall not publish notice more than a year after the  
35 settlor's death because of the automatic one-year statute

1 of limitations on filing claims and challenging the trust,  
2 that notice by ordinary mail must be given only when notice  
3 is published, that notice must be given by the trustee to  
4 the beneficiaries of the trust, to the appropriate surviving  
5 spouses, and to eligible children not residing with the  
6 surviving spouse, that if notice is published, claims can be  
7 filed only by claimants who are reasonably ascertainable within  
8 the notice period, extends the notice period from 60 days to  
9 four months, and provides that notice need not be published in  
10 a county solely because real estate is located in that county.

11 These provisions apply to trusts of settlors dying on or  
12 after July 1, 2011.

13 SUPPORT ALLOWANCE FROM REVOCABLE TRUSTS — SURVIVING SPOUSE  
14 AND MINOR CHILDREN. The bill creates new Code provisions in  
15 the trust Code to allow a settlor's surviving spouse and minor  
16 children to receive support allowances from the settlor's  
17 revocable trust as they would be entitled from the settlor's  
18 estate under probate Code sections 633.374 and 633.376. The  
19 bill also coordinates support allowance benefits from the  
20 settlor's revocable trust and probate estate.

21 These provisions apply to trusts of settlors dying on or  
22 after July 1, 2011.

23 TRUSTEE'S ACCOUNTING. The bill allows the court to require  
24 a trustee to furnish required reports and notices to qualified  
25 beneficiaries of irrevocable trusts and allows the court to  
26 assess costs, including attorney fees, against trustees who  
27 fail to provide the required reports and notices. The bill  
28 also specifies potential consequences for trustees who fail to  
29 provide the required reports and notices.

30 LIMITATION ON ACTIONS AGAINST TRUSTEES. Current law bars  
31 lawsuits against a trustee for breach of trust unless such  
32 lawsuits are filed within one year after the beneficiary's  
33 receipt of the final accounting or report of the trustee.  
34 The bill applies the statute of limitations to one year from  
35 July 1, 2011, for all reports and accountings provided by the

1 trustee unless an exception applies. The bill also makes the  
2 terms used to describe such reports and accountings consistent  
3 with the terms used in Code section 633A.4213.

4 TRUSTEE LIABILITY FOR PARTNERSHIP INTERESTS. The bill  
5 provides that a trustee who holds an interest as a general  
6 partner in a general or limited partnership is not personally  
7 liable on a contract entered into by the partnership after the  
8 trust's acquisition of the interest if the fiduciary capacity  
9 was previously disclosed. In addition, a trustee who holds  
10 an interest as a general partner is not personally liable  
11 for torts committed by the partnership or for obligations  
12 arising from ownership or control of the interest unless the  
13 trustee is personally at fault. This immunity does not apply  
14 if an interest in the partnership is held by the trustee in a  
15 capacity other than that of trustee or is held by the trustee's  
16 spouse or one or more of the trustee's descendants, siblings,  
17 or parents, or the spouse of any of them. If the trustee of  
18 a revocable trust holds an interest as a general partner, the  
19 settlor shall be personally liable for contracts and other  
20 obligations of the partnership as if the settlor were a general  
21 partner. This provision applies to trusts in existence on or  
22 after July 1, 2011.

23 MEDICAL ASSISTANCE TRUSTS — SPECIAL NEEDS AND INCOME. The  
24 bill increases the maximum amount that may be paid or set aside  
25 each month for necessary expenses of a medical assistance  
26 special needs trust and a medical assistance income trust from  
27 \$10 to \$50. The bill also specifies that if a beneficiary's  
28 total monthly income is less than 125 percent of the average  
29 statewide charge for nursing facility services to a private  
30 pay resident of a nursing facility, any property received or  
31 held by the trust shall be expended according to the statutory  
32 priority specified in Code sections 633C.2 and 633C.3.

33 These provisions apply to trusts in existence on or after  
34 July 1, 2011.