

**Senate File 361 - Introduced**

SENATE FILE 361  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1214)

**A BILL FOR**

1 An Act relating to estates and trusts and including retroactive  
2 and other applicability provisions.

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

1 Section 1. NEW SECTION. 633.273A Disposition of failed  
2 devise.

3 Unless from the terms of the will the intent is clear and  
4 explicit to the contrary, and except as provided in section  
5 633.273:

6 1. A devise, other than a residuary devise, that fails for  
7 any reason becomes a part of the residuary estate.

8 2. If the residuary estate is devised to two or more  
9 persons, the share of a residuary devisee that fails for any  
10 reason passes to the other residuary devisee or to the other  
11 residuary devisees in proportion to the interest of each in the  
12 remaining part of the residuary estate.

13 Sec. 2. Section 633.279, subsection 2, paragraph a, Code  
14 2013, is amended by striking the paragraph and inserting in  
15 lieu thereof the following:

16 a. An attested will may be made self-proved at the time of  
17 its execution, or at any subsequent date, by the acknowledgment  
18 thereof by the testator and the affidavits of the witnesses,  
19 each made before a person authorized to administer oaths  
20 and take acknowledgments under the laws of this state, and  
21 evidenced by such person's certificate, under seal, attached  
22 or annexed to the will, in form and content substantially as  
23 follows:

24 Affidavit

25 State of..... )  
26 County of..... ) ss

27 We, the undersigned, ....., ..... and ....., the  
28 testator and the witnesses, respectively, whose names are  
29 signed to the attached or foregoing instrument, being first  
30 duly sworn, declare to the undersigned authority that at the  
31 date of the instrument, we all knew the identity of each other;  
32 the instrument was exhibited to the witnesses by the testator,  
33 who declared it to be the testator's last will and testament  
34 and was signed by the testator or by another at the direction  
35 of the testator at ....., in the County of ....., State

1 of ....., on the date shown in the instrument, and in the  
2 presence of each other as subscribing witnesses; that we, as  
3 witnesses, declare to the undersigned authority that in our  
4 presence the testator executed and acknowledged such will as  
5 the testator's will and that we, in the testator's presence, at  
6 the testator's request, and in the presence of each other, did  
7 subscribe our names thereto as attesting witnesses on the date  
8 of such will; and that the witnesses were sixteen years of age  
9 or older.

10 .....

11 Testator

12 .....

13 Witness

14 .....

15 Witness

16 .....

17 Subscribed, sworn and acknowledged before me by ....., the  
18 testator; and subscribed and sworn before me by ..... and  
19 ....., witnesses, this ... day of ..... (month), ... (year)  
20 .....

21 .....

22 Notary Public, or other notarial  
23 officer authorized to take  
24 (Stamp) and certify acknowledgments  
25 and administer oaths

26 Sec. 3. Section 633.290, Code 2013, is amended to read as  
27 follows:

28 ~~633.290 Petition for probate of will~~ Petitions after death  
29 of testator.

30 ~~1. At the time the will of a decedent is filed with the~~  
31 ~~clerk, or thereafter,~~ After the death of the testator, any  
32 interested person may file a verified petition in the district  
33 court of the proper county for any of the following:

34 ~~1. a.~~ a. To have the will admitted to probate.

35 ~~2. b.~~ b. For the appointment of the executor.

1 c. To request a hearing before the will is admitted to  
2 probate.

3 d. To request a hearing before the appointment of the  
4 executor.

5 e. For the production of the purported will of the decedent  
6 to be filed by the person believed by the petitioner to be in  
7 possession of the will.

8 ~~2. A petition for probate may be combined with a petition~~  
9 ~~for appointment of the executor, and any person interested~~  
10 ~~in either the probate of a will or in the appointment of~~  
11 ~~the executor, may petition for both Petitions for any of the~~  
12 ~~reasons specified in subsection 1 may be combined.~~

13 Sec. 4. Section 633.295, Code 2013, is amended to read as  
14 follows:

15 **633.295 Testimony of witnesses.**

16 The proof may be made by the oral or written testimony of  
17 one or more of the subscribing witnesses to the will. If such  
18 testimony is in writing, it shall be substantially in the  
19 following form executed and sworn to after the death of the  
20 decedent:

21 In the District Court of Iowa

22 In and for ..... County

23 In the Matter of the Estate of .....

24 ....., Deceased

25 Probate No. ....

26 Testimony of Subscribing

27 Witness on Probate of Will.

28 State of ..... )

29 ..... County ) ss

30 I, ....., being first duly sworn, state:

31 I reside in the County of ....., State of .....; I knew  
32 the identity of the testator on the .... day of ..... (month),  
33 ... (year), the date of the instrument, the original or exact  
34 reproduction of which is attached hereto, now shown to me,  
35 and purporting to be the last will and testament of the said

1 ..... , deceased; I am one of the subscribing witnesses  
2 to said instrument; at the said date of said instrument, I  
3 knew the identity of ..... , the other subscribing witness;  
4 that said instrument was exhibited to me and to the other  
5 subscribing witness by the testator, who declared the same to  
6 be the testator's last will and testament, and was signed by  
7 the testator at ..... , in the County of ..... , State of  
8 ..... , on the date shown in said instrument, in the presence  
9 of myself and the other subscribing witness; and the other  
10 subscribing witness and I then and there, at the request of the  
11 testator, in the presence of said testator and in the presence  
12 of each other, subscribed our names thereto as witnesses.

13 .....

14 Name of witness

15 .....

16 Address

17 Subscribed and sworn to before me this ... day of .....  
18 (month), ... (year)

19

.....

20

Notary Public in and for

21 (Stamp)

the State of .....

22 Sec. 5. Section 633.356, subsection 3, paragraph c, Code  
23 2013, is amended to read as follows:

24 c. That the gross value of the decedent's personal property  
25 that would otherwise be distributed by will or intestate  
26 succession does not exceed twenty-five thousand dollars and  
27 there is no real property or the real property passes to  
28 persons exempt from inheritance tax pursuant to section 450.9  
29 as joint tenants with right of survivorship.

30 Sec. 6. Section 633.575, Code 2013, is amended by adding the  
31 following new subsection:

32 NEW SUBSECTION. 7. If the court determines upon application  
33 that it is appropriate or necessary, the court may order that  
34 the attorney appointed pursuant to this section be given copies  
35 of and access to the proposed ward's health information by

1 describing with reasonable specificity the health information  
2 to be disclosed or accessed, for the purpose of fulfilling the  
3 attorney's responsibilities pursuant to this section.

4 Sec. 7. Section 633A.4504, subsection 3, Code 2013, is  
5 amended to read as follows:

6 3. Any claim for breach of trust against a trustee who  
7 has presented an accounting or report to a beneficiary more  
8 than one year prior to July 1, ~~2011~~ 2000, shall be time barred  
9 unless some exception stated in this section applies which  
10 tolls the statute. Any claim arising under this section within  
11 one year of July 1, ~~2011~~ 2000, shall be time barred after one  
12 year unless an exception applies to toll the statute.

13 Sec. 8. Section 635.1, Code 2013, is amended to read as  
14 follows:

15 **635.1 When applicable.**

16 When the gross value of the probate assets of a decedent  
17 subject to the jurisdiction of this state does not exceed one  
18 hundred thousand dollars, and upon a petition as provided in  
19 section 635.2 of an authorized petitioner in accordance with  
20 ~~section~~ sections 633.227, and 633.228, or section 633.290,  
21 subsection 1, paragraph "a" or "b", the clerk shall issue  
22 letters of appointment for administration to the proposed  
23 personal representative named in the petition, if qualified to  
24 serve pursuant to section 633.63 or upon court order pursuant  
25 to section 633.64. Unless otherwise provided in this chapter,  
26 the provisions of chapter 633 apply to an estate probated  
27 pursuant to this chapter.

28 **Sec. 9. APPLICABILITY.**

29 1. The sections of this Act amending sections 633.273A,  
30 633.279, and 633.295 apply to estates of decedents dying on or  
31 after July 1, 2013.

32 2. The sections of this Act amending sections 633.290 and  
33 635.1 apply to petitions filed on or after July 1, 2013.

34 3. The section of this Act amending section 633.575 applies  
35 to all judicial proceedings held on or after July 1, 2013, in

1 which an order for the appointment of a conservatorship is  
2 sought or has been issued.

3 4. The section of this Act amending section 633A.4504  
4 applies retroactively to all reports and accountings provided  
5 by a trustee, unless an exception applies, to one year from  
6 July 1, 2000.

7 EXPLANATION

8 PROBATE CODE.

9 DISPOSITION OF FAILED DEVISE. This bill creates new Code  
10 section 633.273A. New subsection 1 codifies the common law  
11 concept of lapse that applies in a situation where a devisee  
12 (beneficiary) named in a will dies before the testator (person  
13 who creates the will). In such a situation, the testator's  
14 estate (property) passes to the testator's residuary estate  
15 (any portion of the testator's estate not specifically devised  
16 in a will). New subsection 2 reverses the common law doctrine  
17 of "no residue of a residue" that addresses the situation  
18 where a residuary (devisee) dies before the testator and the  
19 testator's residuary estate passes as though the testator died  
20 intestate (without a will). The bill provides that if the  
21 residuary estate is devised to two or more devisees and one  
22 devisee has died, then the entire residuary estate is passed to  
23 the surviving residuary devisee or devisees. These provisions  
24 apply except as provided in Code section 633.273 relating to  
25 devises to certain relatives of the testator who survive the  
26 testator (Iowa's anti-lapse statute) and unless the terms of  
27 the will explicitly provide otherwise. This provision applies  
28 to all decedents dying on or after July 1, 2013.

29 SELF-PROVING WILL AFFIDAVIT. The bill amends Code  
30 section 633.279, subsection 2, relating to the execution of a  
31 self-proving will which allows the testator and witnesses to  
32 the will to submit a notarized affidavit. The bill amends the  
33 language of the affidavit to make the language consistent with  
34 the language of a formal will execution. A conforming change  
35 is made to Code section 633.295 relating to the testimony of

1 witnesses to the will. The amendments apply to estates of  
2 decedents dying on or after July 1, 2013.

3       PETITIONS FILED AFTER DEATH OF TESTATOR. Current Code  
4 section 633.290 provides that after a testator (person who  
5 executed a will) dies, any interested person may file a  
6 petition with the court to admit the will to probate or to have  
7 an executor appointed. The bill expands the scope of this  
8 Code section to also allow any interested person to file a  
9 petition with the court to request a hearing before the will  
10 is admitted to probate or before an executor is appointed, and  
11 for the production of the decedent's purported will. Petitions  
12 for any of the reasons specified may be combined. The bill  
13 makes a conforming change to Code section 635.1, relating to  
14 the administration of small estates. These provisions apply to  
15 petitions filed on or after July 1, 2013.

16       DISTRIBUTION OF PROPERTY BY AFFIDAVIT. The bill amends Code  
17 section 633.356, subsection 3, relating to the distribution of  
18 property by affidavit in certain situations where the gross  
19 value of the decedent's personal property that would otherwise  
20 be distributed does not exceed \$25,000. The bill adds the  
21 words "that would otherwise be distributed by will or intestate  
22 succession" consistent with changes made to this Code section  
23 in 2010 Iowa Acts, chapter 1137 (HF 2483).

24       CONSERVATORSHIP PROCEEDINGS — APPOINTED ATTORNEY ACCESS  
25 TO HEALTH INFORMATION. The bill provides that if the court  
26 determines it would be in a ward's best interest to have legal  
27 representation with respect to conservatorship proceedings, the  
28 court may order that the attorney appointed be given copies  
29 of and access to the proposed ward's health information by  
30 describing with reasonable specificity the health information  
31 to be disclosed or accessed, for the purpose of fulfilling the  
32 attorney's responsibilities. This provision applies to all  
33 judicial proceedings, in which an order for the appointment  
34 of a conservatorship is sought or has been issued, held on or  
35 after July 1, 2013.



1 TRUST CODE — LIMITATION OF ACTION AGAINST TRUSTEE. Current  
2 law in Code section 633A.4504 bars a lawsuit against a trustee  
3 for breach of trust unless the lawsuit is filed within one  
4 year after the beneficiary's receipt of the final accounting  
5 or report of the trustee. This law was enacted as a transition  
6 provision barring claims against trustees who provided reports  
7 to beneficiaries before the trust code was enacted in 2000 to  
8 provide that the statute-of-limitation period was one year from  
9 July 1, 2000. In 2012 Iowa Acts chapter 1123 (HF 609), the  
10 year was amended to July 1, 2011. The bill amends this date  
11 retroactively applicable to July 1, 2000.