

House File 367 - Introduced

HOUSE FILE 367

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 41)

A BILL FOR

1 An Act relating to probate and estate-related laws, including
2 the deduction of administrative expenses on the Iowa
3 fiduciary income tax return, the Iowa inheritance tax,
4 fiduciaries' right to property and information, and
5 the surviving spouse's elective share, and including
6 applicability provisions.

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

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DIVISION I

FIDUCIARY INCOME TAX

Section 1. Section 422.7, Code 2015, is amended by adding the following new subsection:

NEW SUBSECTION. 57. On the Iowa fiduciary income tax return, subtract the amount of administrative expenses that were not taken or allowed as a deduction in calculating net income for federal fiduciary income tax purposes.

DIVISION II

INHERITANCE TAX

Sec. 2. Section 450.9, Code 2015, is amended to read as follows:

450.9 Individual exemptions.

In computing the tax on the net estate, the entire amount of property, interest in property, and income passing to the surviving spouse, ~~and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants, and stepchildren and their lineal descendants~~ are exempt from tax. "Lineal descendants" includes descendants by adoption.

DIVISION III

FIDUCIARY WRITTEN REQUESTS

Sec. 3. Section 633.78, Code 2015, is amended by striking the section and inserting in lieu thereof the following:

633.78 Fiduciary written request and third-party protection.

1. A fiduciary under this chapter may present a written request to any person for the purpose of obtaining property owned by a decedent or by a ward of a conservatorship for which the fiduciary has been appointed, or property to which a decedent or ward is entitled, or for information about such property needed to perform the fiduciary's duties. The request must contain statements confirming all of the following:

1 *a.* The fiduciary's authority has not been revoked, modified,
2 or amended in any manner which would cause the representations
3 in the request to be incorrect.

4 *b.* The request has been signed by all fiduciaries acting on
5 behalf of the decedent or ward.

6 *c.* The request has been sworn and subscribed to under
7 penalty of perjury before a notary public as provided in
8 chapter 9B.

9 *d.* A photocopy of the fiduciary's letters of appointment is
10 being provided with the request.

11 2. A person to whom a request is presented under this
12 section may require that the fiduciary presenting the request
13 provide proof of the fiduciary's identity.

14 3. A person who in good faith provides the property or
15 information a fiduciary requests under this section, after
16 taking reasonable steps to verify the identity of the fiduciary
17 and who has no knowledge that the representations contained in
18 the request are incorrect, shall not be liable to any person
19 for so acting and may assume without inquiry the existence of
20 the facts contained in the request. The period of time to
21 verify the fiduciary's authority shall not exceed ten business
22 days from the date the person received the request. Any right
23 or title acquired from the fiduciary in consideration of the
24 provision of property or information under this section is not
25 invalid in consequence of a misapplication by the fiduciary. A
26 transaction, and a lien created by a transaction, entered into
27 by the fiduciary and a person acting in reliance upon a request
28 under this section is enforceable against the assets for which
29 the fiduciary has responsibility.

30 4. If a person refuses to provide the requested property
31 or information within ten business days after receiving a
32 request under this section, the fiduciary may bring an action
33 to recover the property or information or compel its delivery
34 against the person to whom the fiduciary presented the written
35 request. An action brought under this section must be brought

1 is not necessary for the payment of debts and charges.

2 d. (1) One-third in value of the property held in trust
3 not necessary for the payment of debts and charges over which
4 the decedent was a ~~grantor~~ settlor and retained at the time of
5 death the power to alter, amend, or revoke the trust, or over
6 which the decedent waived or rescinded any such power within
7 one year of the date of death, and to which the surviving
8 spouse has not made any express written relinquishment in
9 compliance with subparagraph (2).

10 (2) The elective share of the surviving spouse shall not
11 include the value of the property held in a trust described in
12 subparagraph (1), if both of the following are true:

13 (a) The decedent created the trust after the date of
14 decedent's marriage to the surviving spouse.

15 (b) Every transfer of property into the trust, except
16 for tangible personal property, included a written statement
17 which complied with this subparagraph division. The written
18 statement shall be in boldface type of a minimum size of ten
19 points, signed and dated by the surviving spouse with a valid
20 notarial acknowledgment, and in substantially the following
21 form:

22 By signing below, I acknowledge that I am giving up all
23 rights to enjoyment of the property described above, regardless
24 of whether or not I survive my spouse and regardless of any
25 rights Iowa law otherwise gives to me with respect to such
26 property. I am specifically waiving my elective share in the
27 property described in this waiver.

28 This waiver shall apply regardless of any changes made to the
29 trust in the future, including any change to the beneficiaries
30 of the trust.

31 2. When a settlor of a revocable trust transfers real
32 property to the trustee of the revocable trust and the
33 settlor's spouse signs a conveyance of the real property to
34 such trustee which includes a general waiver of rights of
35 dower, homestead, and distributive share, the spouse is only

1 relinquishing the right to that real property and its value
2 under subsection 1, paragraph "a", for the purpose of conveying
3 marketable title to a subsequent purchaser from the trustee
4 and is not relinquishing the right to the value of the real
5 estate under subsection 1, paragraph "d", unless the spouse
6 specifically states in writing an intent to relinquish the
7 right to the value of the real estate under subsection 1,
8 paragraph "d". The relinquishment of right under subsection
9 1, paragraph "a" shall not prevent the surviving spouse from
10 electing one-third in value of such real property under
11 subsection 1, paragraph "d".

12 ~~2.~~ 3. The elective share described in this section shall
13 be in lieu of any property the spouse would otherwise receive
14 under the last will and testament of the decedent, through
15 intestacy, or under the terms of a revocable trust.

16 DIVISION V

17 APPLICABILITY

18 Sec. 5. APPLICABILITY.

19 1. The section of this Act amending section 422.7 applies to
20 Iowa fiduciary income tax returns filed for tax years ending on
21 or after July 1, 2015.

22 2. The sections of this Act amending sections 450.9 and
23 633.238 apply to estates of decedents dying on or after July
24 1, 2015.

25 3. The section of this Act amending section 633.78 applies
26 to written requests presented by a fiduciary on or after July
27 1, 2015.

28 EXPLANATION

29 The inclusion of this explanation does not constitute agreement with
30 the explanation's substance by the members of the general assembly.

31 This bill relates to probate and estate-related laws and the
32 deductibility of administrative expenses on the Iowa fiduciary
33 income tax return, the individual exemptions from the Iowa
34 inheritance tax, rights of fiduciaries of decedents and wards
35 under the probate code to information and property, and the

1 surviving spouse's elective share.

2 DIVISION I — FIDUCIARY INCOME TAX. This division amends
3 the definition of net income for an Iowa fiduciary income tax
4 return to allow administrative expenses not taken or allowed
5 as a deduction in calculating net income for federal fiduciary
6 income tax purposes to be subtracted from adjusted gross income
7 when calculating net income. This division applies to Iowa
8 fiduciary income tax returns filed for tax years ending on or
9 after July 1, 2015.

10 DIVISION II — INHERITANCE TAX. This division amends the
11 individual exemptions from the Iowa inheritance tax to include
12 a decedent's stepchildren and their lineal descendants. Lineal
13 descendants include descendants by adoption. This division
14 applies to estates of decedents dying on or after July 1, 2015.

15 DIVISION III — FIDUCIARY WRITTEN REQUESTS. Under current
16 law, a person who in good faith pays or transfers money
17 or other property to a fiduciary, which the fiduciary is
18 authorized to receive, is not responsible for the proper
19 application by the fiduciary. This division amends current
20 law to permit fiduciaries of decedents or wards to present
21 a written request to any person to obtain property to which
22 the decedent or ward is entitled or for information needed
23 to perform the fiduciaries' duties. The division specifies
24 the representations required to be in the request. If the
25 person receiving the request takes reasonable steps to verify
26 the identity of the fiduciary and has no knowledge that the
27 representations in the request are incorrect, the person who
28 provides the property or information requested shall not be
29 liable to any person for so acting. The person who received
30 the request has 10 business days to provide the information or
31 property. After 10 days, the fiduciary may bring an action to
32 recover the property or information or compel its delivery. If
33 the fiduciary prevails in the court action, the court may also
34 award damages sustained by the decedent's or ward's estate,
35 costs of the action, a penalty determined by the court of

1 not less than \$500 and not more than \$10,000, and reasonable
2 attorney fees. This division applies to written requests
3 presented by a fiduciary on or after July 1, 2015.

4 DIVISION IV — ELECTIVE SHARE OF THE SURVIVING SPOUSE.

5 This division relates to a surviving spouse's elective share
6 with regard to the value of property held in the deceased
7 spouse's revocable trust. Under current law, the surviving
8 spouse may waive the surviving spouse's right to include the
9 value of property held in the deceased spouse's revocable
10 trust with an express written relinquishment. This division
11 specifies the form of the express written relinquishment and
12 adds new requirements that the deceased owner's revocable
13 trust be created after the date of the marriage between the
14 deceased owner and the surviving spouse and that every transfer
15 of property must include an express written relinquishment.
16 This division also states when a settlor of a revocable trust
17 transfers real property to the trustee of the revocable trust
18 and the settlor's spouse executes a conveyance which includes a
19 waiver of rights of dower, homestead, and distributive share,
20 the spouse does not waive the right to include the value of
21 the real property in the elective share unless the spouse
22 also specifically states an intent to do so in writing. This
23 division applies to estates of decedents dying on or after July
24 1, 2015.