

House Study Bill 41 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON BALTIMORE)

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 liability of beneficiaries of payable-on-death accounts or
5 transfer-on-death securities accounts, fiduciaries' right
6 to property and information, and the surviving spouse's
7 elective share.

8 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

PAY-ON-DEATH ACCOUNTS AND TRANSFER-ON-DEATH SECURITIES

Sec. 3. Section 524.805, subsection 8, Code 2015, is amended to read as follows:

8. A state bank may receive deposits from one or more persons with the provision that upon the death of the depositors the deposit account shall be the property of the person or persons designated by the deceased depositors as shown on the deposit account records of the state bank.

a. After payment by the state bank, the proceeds shall remain subject to the debts ~~of the decedent and the payment of Iowa inheritance tax, if any~~ and charges, as each are defined

1 in section 633.3, of the decedent's estate, including statutory
2 support allowances to the surviving spouse and children. A
3 state bank paying the person or persons designated shall not be
4 liable as a result of that action for any debts of the decedent
5 or for any estate, inheritance, or succession taxes which may
6 be due this state.

7 b. A proceeding against a designee of the deceased depositor
8 to assert liability for debts and charges may be commenced
9 by the personal representative on behalf of the deceased
10 depositor's estate, surviving spouse, child, or creditor. An
11 action to assert such liability must be commenced within one
12 year after the appointment of the personal representative of
13 the deceased depositor's estate. In the petition to initiate
14 such proceedings, the personal representative shall state all
15 of the following:

16 (1) The funds are needed for an allowable purpose under this
17 section.

18 (2) The personal representative is not aware of any other
19 asset which could be used to pay such expenses.

20 (3) The personal representative has joined all reasonably
21 ascertainable designees of the deceased depositor who succeeded
22 to the deceased depositor's funds as parties in the proceedings
23 initiated under this section, and has requested such designees
24 provide the funds to the personal representative in the same
25 pro rata share to which such designees received the deceased
26 depositor's funds under this section.

27 (4) The personal representative has requested that this
28 matter be set for hearing and that the court prescribe the
29 manner of service of notice of such hearing to all reasonably
30 ascertainable designees of the deceased depositor who succeeded
31 to the deceased depositor's funds under this section.

32 (5) The personal representative will provide an accounting
33 to all designees of the deceased depositor joined in the
34 proceedings which shows that the funds were used for allowable
35 purposes under this section.

1 (6) The personal representative will return any funds which
2 were not used for allowable purposes under this section in pro
3 rata amounts to the parties who provide funds to the personal
4 representative pursuant to proceedings initiated under this
5 section.

6 c. A designee of the deceased depositor against whom a
7 proceeding is brought under this section may elect to transfer
8 the funds received from the deceased depositor's account to the
9 personal representative. The transfer fully discharges the
10 designee of the deceased depositor from all liability under
11 this section.

12 d. A designee of the deceased depositor against whom a
13 proceeding for an accounting is brought may join as a party to
14 the proceeding a designee of any other payable-on-death account
15 of the deceased depositor under this section or a beneficiary
16 of any transfer-on-death security account of the deceased
17 depositor under section 633D.8.

18 e. Amounts recovered by the personal representative
19 pursuant to proceedings initiated under this section shall be
20 administered as a part of the deceased depositor's estate.

21 f. In actions brought under this section, where the deceased
22 depositor was domiciled in Iowa, the laws of Iowa shall apply.

23 Sec. 4. Section 633D.8, Code 2015, is amended to read as
24 follows:

25 **633D.8 Claims against a beneficiary of a transfer on death**
26 **security registration.**

27 1. If other assets of the estate of a deceased owner are
28 insufficient to pay debts and charges, ~~taxes, and expenses of~~
29 ~~administration~~ as each are defined in section 633.3, including
30 statutory support allowances to the surviving spouse and
31 children, a transfer at death of a security registered in
32 beneficiary form is not effective against the estate of the
33 deceased sole owner, or if multiple owners, against the estate
34 of the last owner to die, to the extent needed to pay debts,
35 ~~taxes, and expenses of administration~~ and charges, including

1 statutory support allowances to the surviving spouse and
2 children.

3 2. A beneficiary of a ~~transfer-on-death~~ transfer-on-death
4 security registration under this chapter is liable to account
5 to the personal representative of the deceased owner for the
6 value of the security as of the time of the deceased owner's
7 death to the extent necessary to discharge debts, ~~taxes, and~~
8 ~~expenses of administration~~ and charges, including statutory
9 support allowances to the surviving spouse and children. A
10 proceeding against a beneficiary to assert liability shall
11 ~~not~~ may be commenced unless by the personal representative
12 ~~has received a written demand by the~~ on behalf of the estate,
13 ~~surviving spouse, a creditor, a child, or a person acting for a~~
14 ~~minor child creditor~~ of the deceased owner. In the petition to
15 initiate such proceedings, the personal representative shall
16 state all of the following:

17 a. The funds are needed for an allowable purpose under this
18 section.

19 b. The personal representative is not aware of any other
20 asset which could be used to pay such expenses.

21 c. The personal representative has joined all reasonably
22 ascertainable beneficiaries who succeeded to the deceased
23 owner's funds as parties in the proceedings initiated under
24 this section, and has requested the beneficiaries provide the
25 funds to the personal representative in the same pro rata share
26 to which the beneficiaries received the deceased owner's funds
27 under this chapter.

28 d. The personal representative has requested that this
29 matter be set for hearing and that the court prescribe the
30 manner of service of notice of such hearing to all reasonably
31 ascertainable beneficiaries who succeeded to the deceased
32 owner's funds under this chapter.

33 e. The personal representative will provide an accounting to
34 all beneficiaries joined in the proceedings which shows that
35 the funds were used for allowable purposes under this section.

1 f. The personal representative will return any funds which
2 were not used for allowable purposes under this section in pro
3 rata amounts to the parties who provide funds to the personal
4 representative pursuant to proceedings initiated under this
5 section.

6 3. An action for an accounting under this section must be
7 commenced within ~~two years~~ one year after the ~~death of the~~
8 ~~owner~~ date of appointment of the personal representative of the
9 deceased owner's estate.

10 4. A beneficiary against whom a proceeding is brought may
11 elect to transfer to the personal representative the security
12 registered in the name of the beneficiary if the beneficiary
13 still owns the security, or the net proceeds received by
14 the beneficiary upon disposition of the security by the
15 beneficiary. Such transfer fully discharges the beneficiary
16 from all liability under this section.

17 5. A beneficiary against whom a proceeding for an accounting
18 is brought may join as a party to the proceeding a beneficiary
19 of any other security registered in beneficiary form by the
20 deceased owner or a designee of any depository account in a
21 state bank held in payable-on-death ownership by the deceased
22 owner under section 524.805, subsection 8.

23 6. Amounts recovered by the personal representative with
24 respect to a security shall be administered as part of the
25 deceased owner's estate.

26 7. A district court in this state shall have subject matter
27 jurisdiction over a ~~claim~~ proceeding against a ~~designated~~
28 beneficiary brought by the ~~decedent's~~ deceased owner's
29 personal representative or by a claimant to an interest in a
30 security registered under this chapter. Any provision in a
31 security registration form restricting jurisdiction over a
32 ~~claim~~ proceeding, or restricting a choice of forum, to a forum
33 outside this state is void.

34 8. In an action for an accounting brought under this
35 section, where the deceased owner was domiciled in this state,

1 the laws of this state shall apply.

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DIVISION IV

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FIDUCIARY WRITTEN REQUESTS

4 Sec. 5. Section 633.78, Code 2015, is amended by striking
5 the section and inserting in lieu thereof the following:

6 **633.78 Fiduciary written request and third-party protection.**

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

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

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

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

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

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

27 3. A person who in good faith provides the property or
28 information a fiduciary requests under this section, after
29 taking reasonable steps to verify the identity of the fiduciary
30 and who has no knowledge that the representations contained in
31 the request are incorrect, shall not be liable to any person
32 for so acting and may assume without inquiry the existence of
33 the facts contained in the request. The period of time to
34 verify the fiduciary's authority shall not exceed ten business
35 days from the date the person received the request. Any right

1 or title acquired from the fiduciary in consideration of the
2 provision of property or information under this section is not
3 invalid in consequence of a misapplication by the fiduciary. A
4 transaction, and a lien created by a transaction, entered into
5 by the fiduciary and a person acting in reliance upon a request
6 under this section is enforceable against the assets for which
7 the fiduciary has responsibility.

8 4. If a person refuses to provide the requested property
9 or information within ten business days after receiving a
10 request under this section, the fiduciary may bring an action
11 to recover the property or information or compel its delivery
12 against the person to whom the fiduciary presented the written
13 request. An action brought under this section must be brought
14 within one year after the date of the act or failure to act.
15 If the court finds that the person acted unreasonably in
16 failing to deliver the property or information as requested
17 in the written request, the court may award any or all of the
18 following to the fiduciary:

19 a. Damages sustained by the decedent's or ward's estate.

20 b. Costs of the action.

21 c. A penalty in an amount determined by the court, but
22 not less than five hundred dollars or more than ten thousand
23 dollars.

24 d. Reasonable attorney fees, as determined by the court,
25 based on the value of the time reasonably expended by the
26 attorney and not by the amount of the recovery on behalf of the
27 fiduciary.

28 5. This section does not limit or change the right of
29 beneficiaries, heirs, or creditors to estate property to which
30 they are otherwise entitled.

31 DIVISION V

32 ELECTIVE SHARE OF SURVIVING SPOUSE

33 Sec. 6. Section 633.238, Code 2015, is amended to read as
34 follows:

35 **633.238 Elective share of surviving spouse.**

1 1. The elective share of the surviving spouse shall be
2 limited to all of the following:

3 a. One-third in value of all the legal or equitable estates
4 in real property possessed by the decedent at any time during
5 the marriage which have not been sold on execution or other
6 judicial sale, and to which the surviving spouse has made no
7 express written relinquishment of right, including but not
8 limited to any relinquishments of rights described in paragraph
9 "d".

10 b. All personal property that, at the time of death, was in
11 the hands of the decedent as the head of a family, exempt from
12 execution.

13 c. One-third of all personal property of the decedent that
14 is not necessary for the payment of debts and charges.

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

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

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

28 (b) Every transfer of property into the trust, except
29 for tangible personal property, included a written statement
30 which complied with this subparagraph division. The written
31 statement shall be in boldface type of a minimum size of ten
32 points, signed and dated by the surviving spouse with a valid
33 notarial acknowledgment, and in substantially the following
34 form:

35 By signing below, I acknowledge that I am giving up all

1 rights to enjoyment of the property described above, regardless
2 of whether or not I survive my spouse and regardless of any
3 rights Iowa law otherwise gives to me with respect to such
4 property. I am specifically waiving my elective share in the
5 property described in this waiver.

6 This waiver shall apply regardless of any changes made to the
7 trust in the future, including any change to the beneficiaries
8 of the trust.

9 2. When a settlor of a revocable trust transfers real
10 property to the trustee of the revocable trust and the
11 settlor's spouse signs a conveyance of the real property to
12 such trustee which includes a general waiver of rights of
13 dower, homestead, and distributive share, the spouse is only
14 relinquishing the right to that real property and its value
15 under subsection 1, paragraph "a", for the purpose of conveying
16 marketable title to a subsequent purchaser from the trustee
17 and is not relinquishing the right to the value of the real
18 estate under subsection 1, paragraph "d", unless the spouse
19 specifically states in writing an intent to relinquish the
20 right to the value of the real estate under subsection 1,
21 paragraph "d". The relinquishment of right under subsection
22 1, paragraph "a" shall not prevent the surviving spouse from
23 electing one-third in value of such real property under
24 subsection 1, paragraph "d".

25 2- 3. The elective share described in this section shall
26 be in lieu of any property the spouse would otherwise receive
27 under the last will and testament of the decedent, through
28 intestacy, or under the terms of a revocable trust.

29 EXPLANATION

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

32 This bill relates to probate and estate-related laws and the
33 deductibility of administrative expenses on the Iowa fiduciary
34 income tax return, the individual exemptions from the Iowa
35 inheritance tax, liability of beneficiaries of payable-on-death

1 accounts or transfer-on-death security accounts, rights of
2 fiduciaries of decedents and wards under the probate code to
3 information and property, and the surviving spouse's elective
4 share.

5 DIVISION I — FIDUCIARY INCOME TAX. This division amends
6 the definition of net income for an Iowa fiduciary income tax
7 return to allow administrative expenses not taken or allowed
8 as a deduction in calculating net income for federal fiduciary
9 income tax purposes to be subtracted from adjusted gross income
10 when calculating net income.

11 DIVISION II — INHERITANCE TAX. This division amends the
12 individual exemptions from the Iowa inheritance tax to include
13 a decedent's stepchildren and their lineal descendants. Lineal
14 descendants include descendants by adoption.

15 DIVISION III — PAY-ON-DEATH AND TRANSFER-ON-DEATH
16 SECURITIES ACCOUNTS. Under current Code section 524.805,
17 the proceeds of a pay-on-death account remain subject to the
18 deceased depositor's debts and payment of Iowa inheritance
19 tax. This division amends Code section 524.805 so that the
20 proceeds remain subject to the deceased depositor's estate's
21 debts and charges, including statutory support allowances to
22 the surviving spouse and children. This division permits the
23 personal representative of the deceased depositor to assert
24 liability against the designee on behalf of the deceased
25 depositor's estate, surviving spouse, child, or creditor. The
26 personal representative must commence such an action within one
27 year after the personal representative's appointment. This
28 division specifies certain representations that the personal
29 representative must make in the petition to initiate the
30 proceeding. A designee against whom a proceeding is brought
31 may elect to transfer the funds received from the deceased
32 owner's account to the personal representative, which fully
33 discharges the designee from all liability under the section.
34 This division also permits a designee against whom a proceeding
35 is brought to join a designee of any other payable-on-death

1 account or beneficiary of any transfer-on-death security
2 account of the deceased depositor.

3 Under current Code section 633D.8, a beneficiary of a
4 transfer-on-death security is liable to account to the personal
5 representative of the deceased owner for the value of the
6 security to the extent necessary to discharge the deceased
7 owner's debts, taxes, and expenses of administration. Under
8 current law, a proceeding to assert liability against the
9 beneficiary cannot be commenced unless the deceased owner's
10 surviving spouse, child, or creditor presents a written
11 demand to the deceased owner's personal representative. This
12 division amends Code section 633D.8 to allow the deceased
13 owner's personal representative to initiate a proceeding
14 against a beneficiary on behalf of the deceased owner's estate,
15 surviving spouse, child or creditor without first having
16 received a written demand. This division specifies certain
17 representations that the personal representative must make in
18 the petition to initiate the proceeding. This division also
19 shortens the statute of limitations to commence a proceeding
20 from within two years of the date of the death of the owner
21 to one year after the date of the appointment of the personal
22 representative. This division also permits the beneficiary who
23 is subject to a proceeding under Code section 633D.8 to join
24 designees of payable-on-death accounts which the deceased owner
25 also held.

26 DIVISION IV — FIDUCIARY WRITTEN REQUESTS. Under current
27 law, a person who in good faith pays or transfers money
28 or other property to a fiduciary, which the fiduciary is
29 authorized to receive, is not responsible for the proper
30 application by the fiduciary. This division amends current
31 law to permit fiduciaries of decedents or wards to present
32 a written request to any person to obtain property to which
33 the decedent or ward is entitled or for information needed
34 to perform the fiduciaries' duties. The division specifies
35 the representations required to be in the request. If the

1 person receiving the request takes reasonable steps to verify
2 the identity of the fiduciary and has no knowledge that the
3 representations in the request are incorrect, the person who
4 provides the property or information requested shall not be
5 liable to any person for so acting. The person who received
6 the request has 10 business days to provide the information or
7 property. After 10 days, the fiduciary may bring an action to
8 recover the property or information or compel its delivery. If
9 the fiduciary prevails in the court action, the court may also
10 award damages sustained by the decedent's or ward's estate,
11 costs of the action, a penalty determined by the court of
12 not less than \$500 and not more than \$10,000, and reasonable
13 attorney fees.

14 DIVISION V — ELECTIVE SHARE OF THE SURVIVING SPOUSE. This
15 division relates to a surviving spouse's elective share with
16 regard to the value of property held in the deceased spouse's
17 revocable trust. Under current law, the surviving spouse may
18 waive the surviving spouse's right to include the value of
19 property held in the deceased spouse's revocable trust with
20 an express written relinquishment. This division specifies
21 the form of the express written relinquishment and adds new
22 requirements that the deceased owner's revocable trust be
23 created after the date of the marriage between the deceased
24 owner and the surviving spouse and that every transfer of
25 property must include an express written relinquishment. This
26 division also states when a settlor of a revocable trust
27 transfers real property to the trustee of the revocable trust
28 and the settlor's spouse executes a conveyance which includes a
29 waiver of rights of dower, homestead, and distributive share,
30 the spouse does not waive the right to include the value of
31 the real property in the elective share unless the spouse also
32 specifically states an intent to do so in writing.