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

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

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

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

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

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

(5) The personal representative will provide an accounting to all designees of the deceased depositor joined in the proceedings which shows that the funds were used for allowable purposes under this section.
(6) The personal representative will return any funds which were not used for allowable purposes under this section in proportionate amounts to the parties who provide funds to the personal representative pursuant to proceedings initiated under this section.

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

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

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

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

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

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

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

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

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

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

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

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

e. The personal representative will provide an accounting to all beneficiaries joined in the proceedings which shows that the funds were used for allowable purposes under this section.
f. The personal representative will return any funds which were not used for allowable purposes under this section in pro rata amounts to the parties who provide funds to the personal representative pursuant to proceedings initiated under this section.

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

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

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

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

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

8. In an action for an accounting brought under this section, where the deceased owner was domiciled in this state,
the laws of this state shall apply.

DIVISION IV

FIDUCIARY WRITTEN REQUESTS

Sec. 5. 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:

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

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

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

d. A photocopy of the fiduciary’s letters of appointment is
being provided with the request.

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

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

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

a. Damages sustained by the decedent’s or ward’s estate.
b. Costs of the action.
c. A penalty in an amount determined by the court, but
   not less than five hundred dollars or more than ten thousand
dollars.
d. Reasonable attorney fees, as determined by the court,
based on the value of the time reasonably expended by the
attorney and not by the amount of the recovery on behalf of the
fiduciary.

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

DIVISION V

ELECTIVE SHARE OF SURVIVING SPOUSE

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

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

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

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

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

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

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

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

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

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

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

2. When a settlor of a revocable trust transfers real property to the trustee of the revocable trust and the settlor’s spouse signs a conveyance of the real property to such trustee which includes a general waiver of rights of dower, homestead, and distributive share, the spouse is only relinquishing the right to that real property and its value under subsection 1, paragraph "a", for the purpose of conveying marketable title to a subsequent purchaser from the trustee and is not relinquishing the right to the value of the real estate under subsection 1, paragraph "d", unless the spouse specifically states in writing an intent to relinquish the right to the value of the real estate under subsection 1, paragraph "d". The relinquishment of right under subsection 1, paragraph "a" shall not prevent the surviving spouse from electing one-third in value of such real property under subsection 1, paragraph "d".

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

EXPLANATION

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

This bill relates to probate and estate-related laws and the deductibility of administrative expenses on the Iowa fiduciary income tax return, the individual exemptions from the Iowa inheritance tax, liability of beneficiaries of payable-on-death
accounts or transfer-on-death security accounts, rights of fiduciaries of decedents and wards under the probate code to information and property, and the surviving spouse's elective share.

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

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

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

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

DIVISION IV — FIDUCIARY WRITTEN REQUESTS. Under current law, a person who in good faith pays or transfers money or other property to a fiduciary, which the fiduciary is authorized to receive, is not responsible for the proper application by the fiduciary. This division amends current law to permit fiduciaries of decedents or wards to present a written request to any person to obtain property to which the decedent or ward is entitled or for information needed to perform the fiduciaries' duties. The division specifies the representations required to be in the request. If the
person receiving the request takes reasonable steps to verify the identity of the fiduciary and has no knowledge that the representations in the request are incorrect, the person who provides the property or information requested shall not be liable to any person for so acting. The person who received the request has 10 business days to provide the information or property. After 10 days, the fiduciary may bring an action to recover the property or information or compel its delivery. If the fiduciary prevails in the court action, the court may also award damages sustained by the decedent’s or ward’s estate, costs of the action, a penalty determined by the court of not less than $500 and not more than $10,000, and reasonable attorney fees.

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