

Senate File 2232 - Introduced

SENATE FILE 2232
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3036)

A BILL FOR

1 An Act relating to the Iowa trust code, including the creation
2 of directed trusts, the transfer of trust assets into
3 other trusts, and requirements related to notices to
4 beneficiaries.

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

1 Section 1. Section 633A.1102, Code 2020, is amended by
2 adding the following new subsections:

3 NEW SUBSECTION. 6A. "*Distribution trust director*" means any
4 person given authority by an instrument to exercise all or any
5 portion of the powers set forth in section 633A.4810. Except
6 as provided in the trust instrument, the distribution trust
7 director shall have the same fiduciary duty and liability in
8 the exercise or nonexercise of such powers as the trustee would
9 in the absence of such directory powers.

10 NEW SUBSECTION. 6B. "*Excluded fiduciary*" means any
11 fiduciary excluded from exercising certain powers under an
12 instrument which powers may be exercised by the settlor, trust
13 director, trust protector, or other persons designated in the
14 instrument.

15 NEW SUBSECTION. 10A. "*Investment trust director*" means any
16 person given authority by an instrument to exercise all or any
17 portion of the powers set forth in section 633A.4809. Except
18 as provided in the trust instrument, the investment trust
19 director shall have the same fiduciary duty and liability in
20 the exercise or nonexercise of such powers as the trustee would
21 in the absence of such directory powers.

22 NEW SUBSECTION. 19A. "*Trust director*" means either an
23 investment trust director or a distribution trust director.

24 NEW SUBSECTION. 19B. "*Trust protector*" means any person
25 whose appointment as protector is provided for in the
26 instrument. A trust protector shall not be considered to
27 be acting in a fiduciary capacity except to the extent the
28 governing instrument provides otherwise. However, a trust
29 protector shall be considered to be acting in a fiduciary
30 capacity to the extent that the trust protector exercises the
31 authority or powers of a trust director.

32 Sec. 2. Section 633A.1102, subsection 7, Code 2020, is
33 amended to read as follows:

34 7. "*Fiduciary*" includes a personal representative, executor,
35 administrator, guardian, conservator, and trustee, trust

1 director, and any other person designated as a fiduciary by the
2 applicable instrument or this trust code.

3 Sec. 3. Section 633A.4207, subsection 2, Code 2020, is
4 amended to read as follows:

5 2. ~~If~~ In addition to any powers granted to a trustee,
6 the terms of the trust may confer powers upon a person
7 ~~other than the settlor of a revocable trust power to direct~~
8 ~~certain actions of the trustee, the trustee shall act in~~
9 ~~accordance with an exercise of the power unless the trustee~~
10 ~~knows the attempted exercise violates the terms of the trust~~
11 ~~or the trustee knows that the person holding the power is~~
12 ~~not competent~~ directors and trust protectors as set forth in
13 sections 633A.4801 through 633A.4810. A person's status as
14 a trust director or trust protector under Iowa law shall be
15 determined on the basis of the powers granted and not on the
16 title given to such person in the trust instrument.

17 Sec. 4. Section 633A.4207, subsection 3, Code 2020, is
18 amended by striking the subsection.

19 Sec. 5. Section 633A.4213, Code 2020, is amended by adding
20 the following new subsection:

21 NEW SUBSECTION. 8. Notwithstanding anything in this
22 chapter to the contrary, if a trust instrument, or a trust
23 protector authorized by the trust instrument, designates that a
24 notice, accounting, or report may be delivered to the settlor
25 or to a designated representative on behalf of a beneficiary
26 prior to such beneficiary's twenty-fifth birthday, then,
27 to the extent there is no conflict of interest between the
28 representative and the beneficiary, all notices, accountings,
29 and reports served on such representative with respect to such
30 period will have the same effect as if such beneficiary had
31 been served directly.

32 Sec. 6. NEW SECTION. 633A.4215 **Distributions in further**
33 **trust.**

34 1. As used in this section:

35 a. *"First trust"* means a trust from which income or

1 principal is transferred into the second trust.

2 *b. "Restricted trustee"* means a trustee of the first trust
3 if such trustee is a beneficiary of the first trust or if such
4 trustee has the power to change the trustees of the first trust
5 within the meaning of subsection 5.

6 *c. "Second trust"* means a trust into which the income or
7 principal of the first trust has been transferred.

8 2. Unless the terms of the governing instrument expressly
9 provide otherwise, if a trustee of the first trust has
10 discretion under the terms of a governing instrument to make a
11 distribution of income or principal to or for the benefit of
12 one or more beneficiaries of the first trust, whether or not
13 restricted by any standard, then the trustee, independently or
14 with court approval, may appoint part or all of the income or
15 principal subject to the trustee's discretion in favor of a
16 trustee of a second trust under a governing instrument separate
17 from the governing instrument of the first trust. Before
18 exercising the trustee's discretion to appoint and distribute
19 assets to a second trust, the trustee of the first trust shall
20 determine whether the appointment is necessary or desirable
21 after taking into account the purposes of the first trust, the
22 terms and conditions of the second trust, and the consequences
23 of the distribution. In addition, the following apply to all
24 appointments made under this section:

25 *a.* The second trust may only have as beneficiaries one or
26 more of the beneficiaries of the first trust to or for whom
27 a discretionary distribution of income or principal may be
28 made from the first trust, or to or for whom a distribution of
29 income or principal may be made in the future from the first
30 trust at a time or upon the happening of an event specified
31 under the first trust.

32 *b.* No restricted trustee of the first trust may exercise
33 such authority over the first trust to the extent that doing so
34 could have any of the following effects:

35 (1) Benefiting the restricted trustee as a beneficiary

1 of the first trust, unless the exercise of such authority is
2 limited by an ascertainable standard based on or related to
3 health, education, maintenance, or support.

4 (2) Removing restrictions on discretionary distributions to
5 a beneficiary imposed by the governing instrument under which
6 the first trust was created, except that a provision in the
7 second trust which limits distributions by an ascertainable
8 standard based on or related to the health, education,
9 maintenance, or support of any such beneficiary is permitted,
10 as is a distribution to a trust established pursuant to 42
11 U.S.C. §1396p(d)(4).

12 c. No restricted trustee of the first trust may exercise
13 such authority over the first trust to the extent that doing
14 so would have the effect of increasing the distributions that
15 can be made from the second trust to the restricted trustees of
16 the first trust or to a beneficiary who may change the trustees
17 of the first trust within the meaning of subsection 5 compared
18 to the distributions that can be made to such trustee or
19 beneficiary, as the case may be, under the first trust, unless
20 the exercise of such authority is limited by an ascertainable
21 standard based on or related to health, education, support,
22 or maintenance within the meaning of section 2041(b)(1)(A) or
23 2514(c)(1) of the Internal Revenue Code.

24 d. The provisions of paragraphs "b" and "c" only apply to
25 restrict the authority of a trustee if either a trustee, or
26 a beneficiary who may change the trustee, is a United States
27 citizen or domiciliary under the Internal Revenue Code, or the
28 trust owns property that would be subject to United States
29 estate or gift taxes if owned directly by such a person.

30 e. In the case of any trust contributions which have been
31 treated as gifts qualifying for the exclusion from gift tax
32 described in section 2503(b) of the Internal Revenue Code, by
33 reason of the application of section 2503(c) of the Internal
34 Revenue Code, the governing instrument for the second trust
35 shall provide that the beneficiary's remainder interest shall

1 vest no later than the date upon which such interest would have
2 vested under the terms of the governing instrument for the
3 first trust.

4 *f.* The exercise of such authority may not reduce any income
5 interest of any income beneficiary of any of the following
6 trusts:

7 (1) A trust for which a marital deduction has been taken for
8 federal tax purposes under section 2056 or 2523 of the Internal
9 Revenue Code, or for state tax purposes under any comparable
10 provision of applicable state law.

11 (2) A charitable remainder trust under section 664 of the
12 Internal Revenue Code.

13 (3) A grantor retained annuity or unitrust trust under
14 section 2702 of the Internal Revenue Code.

15 *g.* The exercise of such authority does not apply to trust
16 property subject to a presently exercisable power of withdrawal
17 held by a trust beneficiary to whom, or for the benefit of
18 whom, the trustee has authority to make distributions, unless
19 after the exercise of such authority, the beneficiary's power
20 of withdrawal is unchanged with respect to the trust property.

21 *h.* The exercise of such authority is not prohibited by a
22 provision in the governing instrument that prohibits amendment
23 or revocation of the trust.

24 *i.* Any appointment made by a trustee shall be considered
25 a distribution by the trustee pursuant to the trustee's
26 distribution powers and authority.

27 *j.* Notwithstanding the foregoing provisions of this
28 subsection, the governing instrument of the second trust
29 may grant a power of appointment to one or more of the
30 beneficiaries of the second trust who are beneficiaries of
31 the first trust. The power of appointment may include the
32 power to appoint trust property to the holder of the power of
33 appointment, the holder's creditors, the holder's estate, the
34 creditors of the holder's estate, or any other person, whether
35 or not that person is a trust beneficiary.

1 *k.* A permitted exercise of the trustee's discretion over
2 the entire income and principal of the first trust may be made
3 by modifying the first trust without an actual distribution
4 of property, in which case the second trust is the modified
5 first trust. A modification in further trust pursuant to this
6 paragraph shall require the trustee to notify all beneficiaries
7 of the trust, in writing, at least twenty days prior to the
8 effective date of such exercise, but shall not be subject to
9 the limitations of part 2 of subchapter II of this chapter.

10 1. This section applies to any trust administered under
11 the laws of this state, including a trust whose governing
12 jurisdiction is transferred to this state.

13 3. Any action that may not be taken by a trustee of the
14 first trust by reason of the restrictions in subsection 2,
15 paragraph "b", may instead be taken by any other trustee of the
16 first trust who is not so restricted, or, if none, by the next
17 available party who can be a successor trustee and who is not
18 so restricted.

19 4. The second trust may be a trust created or administered
20 under the laws of any jurisdiction, within or without the
21 United States.

22 5. For the purposes of subsections 1 and 2, a beneficiary
23 shall be considered to have the power to change the trustees
24 if the beneficiary can, alone or with others, name such
25 beneficiary as a trustee or can remove a trustee and replace
26 that trustee with a new trustee who is the beneficiary or who
27 is related or subordinate, as defined in section 672 of the
28 Internal Revenue Code, to the beneficiary.

29 6. The exercise of the power to distribute the income
30 or principal of the trust under this section shall be by an
31 instrument in writing, signed and acknowledged by the trustee,
32 and filed with the records of the trust. The trustee of the
33 first trust may notify the beneficiaries of the first trust, in
34 writing, prior to the effective date of the trustee's exercise
35 of the power under this section. A copy of the exercise of this

1 authority and the second trust agreement shall satisfy this
2 notice provision. For the purposes of this section, the term
3 "*beneficiaries*" means those persons who would be entitled to
4 notice and a copy of the first trust instrument under section
5 633A.4213.

6 7. The exercise of the power to distribute the income or
7 principal of the trust under this section shall be considered
8 the exercise of a power of appointment that shall not be
9 exercised in favor of the trustee, the trustee's creditors, the
10 trustee's estate, or the creditors of the trustee's estate.

11 8. The power under this section may not be exercised to
12 suspend the power to alienate trust property or extend the
13 first trust beyond the permissible period of any rule against
14 perpetuities applicable to the first trust.

15 **Sec. 7. NEW SECTION. 633A.4801 Governing instrument**
16 **may provide trust director or trust protector with powers and**
17 **immunities of trustee.**

18 Any governing instrument providing for a trust director
19 or trust protector may also provide such trust director
20 or trust protector with some, none, or all of the rights,
21 powers, privileges, benefits, immunities, or authorities
22 available to a trustee under the law of this state or under
23 the governing instrument. Unless the governing instrument
24 provides otherwise, a trust director or trust protector has no
25 greater liability to any person than would a trustee holding
26 or benefiting from the rights, powers, privileges, benefits,
27 immunities, or authority provided or allowed by the governing
28 instrument to such trust director or trust protector.

29 **Sec. 8. NEW SECTION. 633A.4802 Liability limits of excluded**
30 **fiduciary.**

31 1. An excluded fiduciary is not liable, either individually
32 or as a fiduciary, for any of the following:

33 a. Any loss that results from compliance with a direction of
34 the trust director, including any loss from the trust director
35 breaching fiduciary responsibilities or acting beyond the trust

1 director's scope of authority.

2 *b.* Any loss that results from a failure to take any
3 action proposed by an excluded fiduciary that requires prior
4 authorization of the trust director if that excluded fiduciary
5 timely sought but failed to obtain that authorization.

6 *c.* Any loss that results from any action or inaction of
7 the excluded fiduciary, except for gross negligence or willful
8 misconduct, when the excluded fiduciary is required, pursuant
9 to the trust agreement or any other reason, to assume the role
10 of trust director or trust protector.

11 2. An excluded fiduciary is relieved of any obligation
12 to review or evaluate any direction from a trust director or
13 to perform investment or suitability reviews, inquiries, or
14 investigations or to make recommendations or evaluations with
15 respect to any investments to the extent the trust director
16 had authority to direct the acquisition, disposition, or
17 retention of the investment. If the excluded fiduciary offers
18 recommendations or evaluations with respect to any investments
19 to the trust director, trust protector, or any investment
20 advisor selected by the investment trust director, such action
21 may not be deemed to constitute an undertaking by the excluded
22 fiduciary to monitor or otherwise participate in actions within
23 the scope of the trust director's authority or to constitute
24 any duty to do so.

25 3. An excluded fiduciary is relieved of any duty to
26 communicate with, warn, or apprise any beneficiary or third
27 party concerning instances in which the excluded fiduciary may
28 have exercised the excluded fiduciary's own discretion in a
29 manner different from the manner directed by the trust director
30 or trust protector.

31 4. Absent contrary provisions in the governing instrument,
32 the actions of the excluded fiduciary pertaining to matters
33 within the scope of authority of the trust director or trust
34 protector shall be deemed to be administrative actions taken by
35 the excluded fiduciary solely to allow the excluded fiduciary

1 to perform those duties assigned to the excluded fiduciary
2 under the governing instrument, and such administrative
3 actions shall not be deemed to constitute an undertaking by
4 the excluded fiduciary to monitor, participate, or otherwise
5 take on any fiduciary responsibility for actions within the
6 scope of authority of the trust director or trust protector.
7 For purposes of this subsection, "*administrative actions*" shall
8 include communications with the trust director or others and
9 carrying out, recording, or reporting actions taken at the
10 trust director's direction.

11 5. In an action against an excluded fiduciary pursuant to
12 the provisions of this section, the burden to prove the matter
13 by clear and convincing evidence is on the person seeking to
14 hold the excluded fiduciary liable.

15 Sec. 9. NEW SECTION. 633A.4803 **Death of settlor.**

16 An excluded fiduciary may continue to follow the direction
17 of the trust director upon the incapacity or death of the
18 settlor if the instrument so allows.

19 Sec. 10. NEW SECTION. 633A.4804 **Excluded fiduciary's**
20 **liability for loss if trust protector appointed.**

21 If an instrument appoints a trust protector, the excluded
22 fiduciary is not liable for any loss resulting from any action
23 taken upon the trust protector's direction.

24 Sec. 11. NEW SECTION. 633A.4805 **Powers of trust protector.**

25 1. The powers of a trust protector are as provided in the
26 governing instrument and may be exercised or not exercised, in
27 the best interests of the beneficiaries as a class, in the sole
28 and absolute discretion of the trust protector and are binding
29 on all other persons. The powers may include the following:

30 a. Modify or amend the trust instrument to achieve favorable
31 tax status or respond to changes in the Internal Revenue Code,
32 state law, or the rulings and regulations thereunder.

33 b. Increase or decrease the interests of any beneficiaries
34 to the trust.

35 c. Modify the terms of any power of appointment granted

1 by the trust. However, a modification or amendment shall
2 not grant a beneficial interest to any individual or class
3 of individuals not specifically provided for under the trust
4 instrument.

5 *d.* Remove and appoint a trustee, trust director, or other
6 person designated in the governing trust instrument.

7 *e.* Terminate the trust.

8 *f.* Veto or direct trust distributions.

9 *g.* Change situs of the trust.

10 *h.* Change the governing law of the trust.

11 *i.* Appoint a successor trust protector.

12 *j.* Interpret terms of the trust instrument at the request
13 of the trustee.

14 *k.* Advise the trustee on matters concerning a beneficiary.

15 *l.* Amend or modify the trust instrument to take advantage of
16 laws governing restraints on alienation, distribution of trust
17 property, or the administration of the trust.

18 *m.* Provide direction regarding notification of qualified
19 beneficiaries pursuant to section 633A.4213.

20 *n.* Add to the trust an individual beneficiary or
21 beneficiaries from a class of individuals identified in the
22 governing instrument.

23 *o.* Add to the trust a charitable beneficiary or
24 beneficiaries from a class of charities identified in the trust
25 instrument.

26 *p.* Provide other powers in the governing instrument.

27 2. The powers referenced in subsection 1, paragraphs "e",
28 "f", and "l", may be granted notwithstanding the provisions of
29 sections 633A.2201 through 633A.2208.

30 **Sec. 12. NEW SECTION. 633A.4806 Submission to court**
31 **jurisdiction — effect on trust director or trust protector.**

32 By accepting an appointment to serve as a trust director or
33 trust protector of a trust that is subject to the laws of this
34 state, the trust director or the trust protector submits to the
35 jurisdiction of the courts of Iowa even if investment advisory

1 agreements or other related agreements provide otherwise. The
2 trust director or trust protector may be made a party to any
3 action or proceeding if a decision or action of the trust
4 director or trust protector affects a trust that is subject to
5 the laws of this state.

6 Sec. 13. NEW SECTION. **633A.4807 Powers of trust protector**
7 **incorporated by reference in will or trust instrument.**

8 Any of the powers enumerated in section 633A.4805, as they
9 exist at the time of the signing of a will by a testator or at
10 the time of the signing of a trust instrument by a settlor,
11 may be, by appropriate reference made thereto, incorporated in
12 whole or in part in such will or trust instrument, by a clearly
13 expressed intention of a testator of a will or settlor of a
14 trust instrument.

15 Sec. 14. NEW SECTION. **633A.4808 Investment trust director**
16 **or distribution trust director provided for in trust instrument.**

17 A trust instrument governed by the laws of this state may
18 provide for a person to act as an investment trust director
19 or a distribution trust director with regard to investment
20 decisions or discretionary distributions, respectively. Unless
21 otherwise provided by the terms of the governing instrument, a
22 person may simultaneously serve as a trust director and a trust
23 protector.

24 Sec. 15. NEW SECTION. **633A.4809 Powers of investment trust**
25 **director.**

26 The powers of an investment trust director shall be provided
27 in the trust instrument and may be exercised or not exercised,
28 in the best interests of the beneficiaries as a class, in the
29 sole and absolute discretion of the investment trust director
30 and are binding on any other person and any other interested
31 party, fiduciary, and excluded fiduciary. Unless the terms
32 of the governing instrument provide otherwise, the investment
33 trust director has the power to do all of the following:

34 1. Direct the trustee with respect to the retention,
35 purchase, sale, exchange, tender, or other transaction

1 affecting the ownership thereof or rights therein of trust
2 investments. These powers include the pledge or encumbrance
3 of trust property, lending of trust assets, either secured or
4 unsecured, at terms defined by the investment trust director,
5 to any party including beneficiaries of the trust, and the
6 investment and reinvestment of principal and income of the
7 trust.

8 2. Vote proxies for securities held in trust.

9 3. Select one or more investment directors, managers, or
10 counselors, including the trustee, and delegate to them any of
11 the investment trust director's powers.

12 4. Direct the trustee with respect to any additional powers
13 over investment and management of trust assets provided in the
14 governing instrument.

15 5. Direct the trustee as to the value of nonpublicly traded
16 trust investments.

17 6. Direct the trustee as to any investment or management
18 power referenced in sections 633A.4401 and 633A.4402.

19 Sec. 16. NEW SECTION. **633A.4810 Powers of distribution**
20 **trust director.**

21 The powers of a distribution trust director over any
22 discretionary distributions of income or principal, including
23 distributions pursuant to an ascertainable standard or other
24 criteria and appointments pursuant to section 633A.4215, shall
25 be provided in the trust instrument and may be exercised or
26 not exercised, in the best interests of the beneficiaries as a
27 class, in the sole and absolute discretion of the distribution
28 trust director and are binding on any other person and any
29 other interested party, fiduciary, and excluded fiduciary.
30 Unless the terms of the document provide otherwise, the
31 distribution trust director shall direct the trustee with
32 regard to all discretionary distributions to beneficiaries
33 and may direct appointments pursuant to section 633A.4215.
34 The distribution trust director may also provide direction
35 regarding notification of qualified beneficiaries pursuant to

1 The bill defines "investment trust director" as any person
2 given authority by the instrument to exercise all or any
3 portion of the powers set forth in new Code section 633A.4809.

4 The bill defines "trust director" as either an investment
5 trust director or a distribution trust director.

6 The bill defines "trust protector" as any person whose
7 appointment as protector is provided for in the instrument.

8 The bill amends the definition of "fiduciary" in Code
9 section 633A.1102 to include "trust director" and any other
10 person designated by the applicable instrument or the trust
11 code.

12 The bill also amends Code section 633A.4207 to instead
13 provide for powers to be granted to a trust director or trust
14 protector. The bill further modifies Code section 633A.4207
15 to indicate a person's status as a trust director or trust
16 protector is to be determined by the powers granted to such
17 person, not the title in the trust instrument.

18 The bill strikes Code section 633A.4207(3), which stated a
19 person other than a beneficiary who held the power to direct
20 was presumptively a fiduciary and was liable for any loss that
21 resulted from a breach of the person's fiduciary duty.

22 The bill adds a new subsection to Code section 633A.4213.
23 This new subsection provides that if a trust instrument, or a
24 trust protector authorized by the trust instrument, designates
25 that a notice, accounting, or report may be delivered to the
26 settlor or to a designated representative on behalf of a
27 beneficiary prior to such beneficiary's 25th birthday, then,
28 to the extent there is no conflict of interest between the
29 representative and the beneficiary, all notices, accountings,
30 and reports served on such representative with respect to such
31 period will have the same effect as if such beneficiary had
32 been served directly.

33 The bill limits a trustee's decanting ability in several
34 ways. First, decanting is allowed when a trustee has
35 discretion under the terms of a governing instrument to make a

1 distribution of income or principal to or for the benefit of
2 one or more beneficiaries of a trust.

3 Second, before exercising the trustee's discretion to
4 appoint and distribute assets to a second trust, the trustee
5 of the first trust must determine whether the appointment is
6 necessary or desirable after taking into account the purposes
7 of the first trust, the terms and conditions of the second
8 trust, and the consequences of the distribution.

9 Third, the bill limits a restricted trustee's decanting
10 ability. The trustee of the first trust is a "restricted
11 trustee" if such trustee is a beneficiary of the first trust or
12 if a beneficiary of the first trust has a power to change the
13 trustees within the meaning of Code section 633A.4215(5). The
14 bill provides a restricted trustee is prohibited from decanting
15 the trust if doing so could benefit the restricted trustee as
16 a beneficiary of the first trust, unless the exercise of such
17 authority is limited by an ascertainable standard related to
18 health, education, maintenance, or support. The bill also
19 provides a restricted trustee is prohibited from decanting the
20 trust if doing so could remove restrictions on discretionary
21 distributions to a beneficiary imposed by the governing
22 instrument under which the first trust was created, except that
23 a provision in the second trust which limits distributions by
24 an ascertainable standard related to the health, education,
25 maintenance, or support of any such beneficiary is permitted,
26 as is a distribution to a trust established pursuant to 42
27 U.S.C. §1396p(d)(4).

28 Fourth, the second trust may only have as beneficiaries
29 one or more of the beneficiaries of the first trust to or for
30 whom a discretionary distribution of income or principal may
31 be made from the first trust, or to or for whom a distribution
32 of income or principal may be made in the future from the first
33 trust at a time or upon the happening of an event specified
34 under the first trust.

35 Fifth, no restricted trustee of the first trust may exercise

1 authority over the first trust to the extent that doing so
2 would have the effect of increasing the distributions that can
3 be made from the second trust to the restricted trustees of the
4 first trust or to a beneficiary who may change the trustees of
5 the first trust compared to the distributions that can be made
6 to such trustee or beneficiary, as the case may be, under the
7 first trust, unless the exercise of such authority is limited
8 by an ascertainable standard related to health, education,
9 support, or maintenance within the meaning of section
10 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

11 Sixth, in the case of any trust contributions which have
12 been treated as gifts qualifying for the exclusion from gift
13 tax described in section 2503(b) of the Internal Revenue Code,
14 by reason of the application of section 2503(c) of the Internal
15 Revenue Code, the governing instrument for the second trust
16 is to provide that the beneficiary's remainder interest shall
17 vest no later than the date upon which such interest would have
18 vested under the terms of the governing instrument for the
19 first trust.

20 Seventh, the exercise of such authority may not reduce any
21 income interest of any income beneficiary of a charitable
22 remainder trust under section 664 of the Internal Revenue Code,
23 a grantor retained annuity or unitrust trust under section 2702
24 of the Internal Revenue Code, or a trust for which a marital
25 deduction has been taken for federal tax purposes under section
26 2056 or 2523 of the Internal Revenue Code, or for state tax
27 purposes under any comparable provision of applicable state
28 law.

29 Eighth, the exercise of such authority does not apply
30 to trust property subject to a presently exercisable power
31 of withdrawal held by a trust beneficiary to whom, or for
32 the benefit of whom, the trustee has authority to make
33 distributions, unless after the exercise of such authority, the
34 beneficiary's power of withdrawal is unchanged with respect to
35 the trust property.

1 Ninth, the exercise of such authority may not suspend the
2 power to alienate trust property or extend the first trust
3 beyond the permissible period of any rule against perpetuities
4 applicable to the first trust.

5 The bill contains a provision describing the legislative
6 intent of the new decanting section. The new Code section
7 is to be declaratory of the common law of this state, which
8 permits distributions in further trust, and is to be liberally
9 construed to effectuate such intent. In addition, the bill
10 provides that no provision of the new decanting section is to
11 be construed to abridge the right of any trustee who has the
12 power to distribute income or principal.

13 The bill provides that any governing instrument providing
14 for a trust director or trust protector may also provide such
15 trust director or trust protector with some, none, or all
16 of the rights, powers, privileges, benefits, immunities, or
17 authorities available to a trustee under Iowa law or under the
18 governing instrument. The bill also limits the liability of
19 trust directors and trust protectors to no greater than that
20 of a trustee holding or benefiting from the rights, powers,
21 privileges, benefits, immunities, or authority provided or
22 allowed by the governing instrument, unless the governing
23 instrument provides otherwise.

24 The bill places limitations on the liability of an excluded
25 fiduciary. The bill provides an excluded fiduciary is not
26 liable for any loss that results from compliance with a
27 direction of the trust director; any loss that results from a
28 failure to take any action proposed by an excluded fiduciary
29 that requires prior authorization of the trust director if that
30 excluded fiduciary timely sought but failed to obtain that
31 authorization; and any loss that results from any action or
32 inaction of the excluded fiduciary, except for gross negligence
33 or willful misconduct, when the excluded fiduciary is required,
34 pursuant to the trust agreement or any other reason, to assume
35 the role of trust director or trust protector.

1 In terms of other limitations on the liability of an excluded
2 fiduciary, the bill states an excluded fiduciary is relieved
3 of any obligation to review or evaluate any direction from a
4 trust director or to perform investment or suitability reviews,
5 or to make recommendations or evaluations with respect to any
6 investments to the extent the trust director had authority
7 to direct the acquisition, disposition, or retention of the
8 investment. The bill provides if the excluded fiduciary offers
9 recommendations to the trust director, trust protector, or any
10 investment advisor selected by the investment trust director,
11 with respect to any investments, such action may not be deemed
12 to constitute an undertaking by the excluded fiduciary to
13 monitor or otherwise participate in actions within the scope of
14 the trust director's authority.

15 The bill also relieves the excluded fiduciary from any duty
16 to communicate with, warn, or apprise any beneficiary or third
17 party concerning instances in which the excluded fiduciary may
18 have exercised the excluded fiduciary's own discretion in a
19 manner different from the manner directed by the trust director
20 or trust protector.

21 The bill provides, absent contrary provisions in the
22 governing instrument, the actions of the excluded fiduciary
23 pertaining to matters within the scope of authority of
24 the trust director or trust protector shall be deemed to
25 be administrative actions taken by the excluded fiduciary
26 solely to allow the excluded fiduciary to perform those
27 duties assigned to the excluded fiduciary under the governing
28 instrument. Pursuant to the bill, such administrative actions
29 shall not be deemed to constitute an undertaking by the
30 excluded fiduciary to monitor, participate, or otherwise take
31 on any fiduciary responsibility for actions within the scope of
32 authority of the trust director or trust protector.

33 In terms of the relationship between excluded fiduciaries
34 and trust protectors, the bill states that if an instrument
35 appoints a trust protector, the excluded fiduciary is not

1 liable for any loss resulting from any action taken upon the
2 trust protector's direction.

3 The bill sets out that in an action against an excluded
4 fiduciary, the burden to prove the matter by clear and
5 convincing evidence is on the person seeking to hold the
6 excluded fiduciary liable.

7 The bill provides that, upon the incapacity or death of
8 the settlor, an excluded fiduciary may continue to follow the
9 direction of the trust director if the instrument so allows.

10 The bill states the powers of a trust protector are as
11 provided in the governing instrument and may be exercised or
12 not exercised, in the best interests of the beneficiaries as
13 a class, in the sole and absolute discretion of the trust
14 protector. The bill describes actions trust protectors may
15 take, unless the governing instrument states otherwise.

16 The bill also addresses the jurisdiction of Iowa courts over
17 trust directors and trust protectors. The bill states that
18 by accepting an appointment to serve as a trust director or
19 trust protector of a trust that is subject to the laws of this
20 state, the trust director or the trust protector submits to the
21 jurisdiction of the courts of Iowa even if investment advisory
22 agreements or other related agreements provide otherwise.

23 The bill allows any of the powers enumerated in new Code
24 section 633A.4805, as such powers exist at the time of the
25 signing of a will by a testator or at the time of the signing
26 of a trust instrument by a settlor, to be incorporated in such
27 will or trust instrument, by a clearly expressed intention of a
28 testator of a will or settlor of a trust instrument.

29 The bill permits a person to simultaneously serve as a trust
30 director and a trust protector.

31 The bill states the powers of an investment trust director
32 shall be provided in the trust instrument and may be exercised
33 or not exercised, in the best interests of the beneficiaries as
34 a class, in the sole and absolute discretion of the investment
35 trust director. The bill describes actions investment trust

1 directors may take, unless the governing instrument states
2 otherwise.

3 The bill provides the powers of a distribution trust
4 director over any discretionary distributions of income or
5 principal, including distributions pursuant to an ascertainable
6 standard or other criteria and appointments pursuant to
7 new Code section 633A.4215, shall be provided in the trust
8 instrument and may be exercised or not exercised, in the best
9 interests of the beneficiaries as a class, in the sole and
10 absolute discretion of the distribution trust director. The
11 bill indicates that, unless the terms of the document provide
12 otherwise, the distribution trust director is to direct the
13 trustee with regard to all discretionary distributions to
14 beneficiaries. In addition, the bill allows the distribution
15 trust director to provide direction regarding notification of
16 qualified beneficiaries pursuant to Code section 633A.4213.

17 The bill allows the Code editor to organize the provisions of
18 the bill enacting new Code sections 633A.4801 through 633A.4810
19 as a new part under subchapter IV in Code chapter 633A.