

Senate Study Bill 3036 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

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

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

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

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

26 NEW SUBSECTION. 19B. "*Trust protector*" means any person
27 given authority by an instrument to exercise all or any portion
28 of the powers and discretions set forth in section 633A.4805.
29 A trust protector shall not be considered to be acting in
30 a fiduciary capacity except to the extent the governing
31 instrument provides otherwise. However, a trust protector
32 shall be considered to be acting in a fiduciary capacity to
33 the extent that the trust protector exercises the authority or
34 powers of a trust director.

35 Sec. 2. Section 633A.1102, subsection 7, Code 2020, is

1 amended to read as follows:

2 7. "*Fiduciary*" includes a personal representative, executor,
3 administrator, guardian, conservator, ~~and trustee~~, and trust
4 director.

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

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

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

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

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

35 Sec. 6. NEW SECTION. 633A.4215 **Distributions in further**

1 trust.

2 1. As used in this section:

3 a. "*First trust*" means a trust from which income or
4 principal is transferred into the second trust.

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

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

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

28 a. The second trust may only have as beneficiaries one or
29 more of the beneficiaries of the first trust to or for whom
30 a discretionary distribution of income or principal may be
31 made from the first trust, or to or for whom a distribution of
32 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 b. No restricted trustee of the first trust may exercise

1 such authority over the first trust to the extent that doing so
2 could have any of the following effects:

3 (1) Benefiting the restricted trustee as a beneficiary
4 of the first trust, unless the exercise of such authority is
5 limited by an ascertainable standard based on or related to
6 health, education, maintenance, or support.

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

15 c. No restricted trustee of the first trust may exercise
16 such authority over the first trust to the extent that doing
17 so would have the effect of increasing the distributions that
18 can be made from the second trust to the restricted trustees of
19 the first trust or to a beneficiary who may change the trustees
20 of the first trust within the meaning of subsection 5 compared
21 to the distributions that can be made to such trustee or
22 beneficiary, as the case may be, under the first trust, unless
23 the exercise of such authority is limited by an ascertainable
24 standard based on or related to health, education, support,
25 or maintenance within the meaning of section 2041(b)(1)(A) or
26 2514(c)(1) of the Internal Revenue Code.

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

33 e. In the case of any trust contributions which have been
34 treated as gifts qualifying for the exclusion from gift tax
35 described in section 2503(b) of the Internal Revenue Code, by

1 reason of the application of section 2503(c) of the Internal
2 Revenue Code, the governing instrument for the second trust
3 shall provide that the beneficiary's remainder interest shall
4 vest no later than the date upon which such interest would have
5 vested under the terms of the governing instrument for the
6 first trust.

7 *f.* The exercise of such authority may not reduce any income
8 interest of any income beneficiary of any of the following
9 trusts:

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

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

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

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

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

27 *i.* Any appointment made by a trustee shall be considered
28 a distribution by the trustee pursuant to the trustee's
29 distribution powers and authority.

30 *j.* Notwithstanding the foregoing provisions of this
31 subsection, the governing instrument of the second trust
32 may grant a power of appointment to one or more of the
33 beneficiaries of the second trust who are beneficiaries of
34 the first trust. The power of appointment may include the
35 power to appoint trust property to the holder of the power of

1 appointment, the holder's creditors, the holder's estate, the
2 creditors of the holder's estate, or any other person, whether
3 or not that person is a trust beneficiary.

4 1. This section applies to any trust administered under
5 the laws of this state, including a trust whose governing
6 jurisdiction is transferred to this state.

7 3. Any action that may not be taken by a trustee of the
8 first trust by reason of the restrictions in subsection 2,
9 paragraph "b", may instead be taken by any other trustee of the
10 first trust who is not so restricted, or, if none, by the next
11 available party who can be a successor trustee and who is not
12 so restricted.

13 4. The second trust may be a trust created or administered
14 under the laws of any jurisdiction, within or without the
15 United States.

16 5. For the purposes of subsection 2, a beneficiary shall
17 be considered to have the power to change the trustees if the
18 beneficiary can, alone or with others, name such beneficiary
19 as a trustee or can remove a trustee and replace that trustee
20 with a new trustee who is the beneficiary or who is related or
21 subordinate, as defined in section 672 of the Internal Revenue
22 Code, to the beneficiary.

23 6. The exercise of the power to distribute the income
24 or principal of the trust under this section shall be by an
25 instrument in writing, signed and acknowledged by the trustee,
26 and filed with the records of the trust. The trustee of the
27 first trust may notify the beneficiaries of the first trust, in
28 writing, prior to the effective date of the trustee's exercise
29 of the power under this section. A copy of the exercise of this
30 authority and the second trust agreement shall satisfy this
31 notice provision. For the purposes of this section, the term
32 "beneficiaries" means those persons who would be entitled to
33 notice and a copy of the first trust instrument under section
34 633A.4213.

35 7. The exercise of the power to distribute the income or

1 principal of the trust under this section shall be considered
2 the exercise of a power of appointment, excluding the power to
3 appoint the trustee, the trustee's creditors, the trustee's
4 estate, or the creditors of the trustee's estate.

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

9 Sec. 7. NEW SECTION. 633A.4801 **Governing instrument**
10 **may provide trust director or trust protector with powers and**
11 **immunities of trustee.**

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

23 Sec. 8. NEW SECTION. 633A.4802 **Liability limits of excluded**
24 **fiduciary.**

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

27 a. Any loss that results from compliance with a direction of
28 the trust director, including any loss from the trust director
29 breaching fiduciary responsibilities or acting beyond the trust
30 director's scope of authority.

31 b. Any loss that results from a failure to take any
32 action proposed by an excluded fiduciary that requires prior
33 authorization of the trust director if that excluded fiduciary
34 timely sought but failed to obtain that authorization.

35 c. Any loss that results from any action or inaction of

1 the excluded fiduciary, except for gross negligence or willful
2 misconduct, when the excluded fiduciary is required, pursuant
3 to the trust agreement or any other reason, to assume the role
4 of trust director or trust protector.

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

19 3. An excluded fiduciary is relieved of any duty to
20 communicate with, warn, or apprise any beneficiary or third
21 party concerning instances in which the excluded fiduciary may
22 have exercised the excluded fiduciary's own discretion in a
23 manner different from the manner directed by the trust director
24 or trust protector.

25 4. Absent contrary provisions in the governing instrument,
26 the actions of the excluded fiduciary pertaining to matters
27 within the scope of authority of the trust director or trust
28 protector shall be deemed to be administrative actions taken by
29 the excluded fiduciary solely to allow the excluded fiduciary
30 to perform those duties assigned to the excluded fiduciary
31 under the governing instrument, and such administrative
32 actions shall not be deemed to constitute an undertaking by
33 the excluded fiduciary to monitor, participate, or otherwise
34 take on any fiduciary responsibility for actions within the
35 scope of authority of the trust director or trust protector.

1 For purposes of this subsection, "administrative actions" shall
2 include communications with the trust director or others and
3 carrying out, recording, or reporting actions taken at the
4 trust director's direction.

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

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

10 An excluded fiduciary may continue to follow the direction
11 of the trust director upon the incapacity or death of the
12 settlor if the instrument so allows.

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

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

18 Sec. 11. NEW SECTION. 633A.4805 **Powers and discretions of**
19 **trust protector.**

20 1. The powers and discretions of a trust protector are as
21 provided in the governing instrument and may be exercised or
22 not exercised, in the best interests of the trust, in the sole
23 and absolute discretion of the trust protector and are binding
24 on all other persons. Except as otherwise provided in the
25 governing instrument, the trust protector may do all of the
26 following:

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

30 b. Increase or decrease the interests of any beneficiaries
31 to the trust.

32 c. Modify the terms of any power of appointment granted
33 by the trust. However, a modification or amendment shall
34 not grant a beneficial interest to any individual or class
35 of individuals not specifically provided for under the trust

1 instrument.

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

4 *e.* Terminate the trust.

5 *f.* Veto or direct trust distributions.

6 *g.* Change situs of the trust.

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

8 *i.* Appoint a successor trust protector.

9 *j.* Interpret terms of the trust instrument at the request
10 of the trustee.

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

12 *l.* Amend or modify the trust instrument to take advantage of
13 laws governing restraints on alienation, distribution of trust
14 property, or the administration of the trust.

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

17 *n.* Add to the trust an individual beneficiary or
18 beneficiaries from a class of individuals identified in the
19 governing instrument.

20 *o.* Add to the trust a charitable beneficiary or
21 beneficiaries from a class of charities identified in the trust
22 instrument.

23 *p.* Provide other powers and discretions in the governing
24 instrument.

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

28 Sec. 12. NEW SECTION. 633A.4806 Submission to court
29 jurisdiction — effect on trust director or trust protector.

30 By accepting an appointment to serve as a trust director or
31 trust protector of a trust that is subject to the laws of this
32 state, the trust director or the trust protector submits to the
33 jurisdiction of the courts of Iowa even if investment advisory
34 agreements or other related agreements provide otherwise. The
35 trust director or trust protector may be made a party to any

1 action or proceeding if a decision or action of the trust
2 director or trust protector affects a trust that is subject to
3 the laws of this state.

4 Sec. 13. NEW SECTION. **633A.4807 Powers of trust director**
5 **incorporated by reference in will or trust instrument.**

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

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

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

22 Sec. 15. NEW SECTION. **633A.4809 Powers and discretions of**
23 **investment trust director.**

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

32 1. Direct the trustee with respect to the retention,
33 purchase, sale, exchange, tender, or other transaction
34 affecting the ownership thereof or rights therein of trust
35 investments. These powers include the pledge or encumbrance

1 of trust property, lending of trust assets, either secured or
2 unsecured, at terms defined by the investment trust director,
3 to any party including beneficiaries of the trust, and the
4 investment and reinvestment of principal and income of the
5 trust.

6 2. Vote proxies for securities held in trust.

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

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

13 5. Direct the trustee as to the value of nonpublicly traded
14 trust investments.

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

17 Sec. 16. NEW SECTION. 633A.4810 Powers and discretions of
18 distribution trust director.

19 The powers and discretions of a distribution trust director
20 over any discretionary distributions of income or principal,
21 including distributions pursuant to an ascertainable standard
22 or other criteria and appointments pursuant to section
23 633A.4215, shall be provided in the trust instrument and may
24 be exercised or not exercised, in the best interests of the
25 trust, in the sole and absolute discretion of the distribution
26 trust director and are binding on any other person and any
27 other interested party, fiduciary, and excluded fiduciary.
28 Unless the terms of the document provide otherwise, the
29 distribution trust director shall direct the trustee with
30 regard to all discretionary distributions to beneficiaries
31 and may direct appointments pursuant to section 633A.4215.
32 The distribution trust director may also provide direction
33 regarding notification of qualified beneficiaries pursuant to
34 section 633A.4213.

35 Sec. 17. LEGISLATIVE INTENT. It is the intent of the

1 general assembly that the provisions of this Act enacting
2 section 433A.4215 is declaratory of the common law of this
3 state permitting distributions in further trust and shall be
4 liberally construed to effectuate the intent to maintain such
5 common law authority. Section 433A.4215, as enacted by this
6 Act, shall not be construed to abridge the right of any trustee
7 who has power to distribute income or principal in further
8 trust which arises under the terms of the first trust or any
9 statute or common law applicable to such trust.

10 Sec. 18. CODE EDITOR DIRECTIVE. The Code editor may
11 organize the provisions of this Act enacting sections 633A.4801
12 through 633A.4810 as a new part under subchapter IV in chapter
13 633A.

14 EXPLANATION

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

17 This bill relates to the Iowa trust code. The bill codifies
18 the concept of decanting, which generally allows trustees to
19 appoint part or all of the income or principal subject to their
20 discretion in favor of a trustee of a second trust. The second
21 trust may be a trust created or administered under the laws of
22 any jurisdiction, within or without the United States.

23 The bill creates and empowers new positions in the trusts
24 area, including distribution trust directors, excluded
25 fiduciaries, investment trust directors, trust directors, and
26 trust protectors.

27 The bill defines "distribution trust director" as any person
28 given authority by the instrument to exercise all or any
29 portion of the powers and discretions set forth in new Code
30 section 633A.4810.

31 The bill defines "excluded fiduciary" as any fiduciary
32 excluded from exercising certain powers under the instrument
33 which powers may be exercised by the settlor, trust director,
34 trust protector, or other persons designated in the instrument.

35 The bill defines "investment trust director" as any person

1 given authority by the instrument to exercise all or any
2 portion of the powers and discretions set forth in new Code
3 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 given
7 authority by the instrument to exercise all or any portion
8 of the powers and discretions set forth in new Code section
9 633A.4805.

10 The bill amends the definition of "fiduciary" in Code
11 section 633A.1102 to include "trust director".

12 The bill also amends Code section 633A.4207 to instead
13 provide for powers to be granted to a trust director. The
14 bill further modifies Code section 633A.4207 to indicate a
15 person's status as a trust director or trust protector is to
16 be determined by the powers granted to such person, not the
17 language in the governing 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 and discretions of a trust
11 protector are as provided in the governing instrument and
12 may be exercised or not exercised, in the best interests of
13 the trust, 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 and discretions of an investment
32 trust director shall be provided in the trust instrument and
33 may be exercised or not exercised, in the best interests of the
34 trust, 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 and discretions of a
4 distribution trust director over any discretionary
5 distributions of income or principal, including distributions
6 pursuant to an ascertainable standard or other criteria and
7 appointments pursuant to new Code section 633A.4215, shall be
8 provided in the trust instrument and may be exercised or not
9 exercised, in the best interests of the trust, 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.