

Senate Study Bill 1016 - Introduced

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

A BILL FOR

1 An Act relating to the creation, administration, and
2 termination of custodial trusts.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

IOWA UNIFORM CUSTODIAL TRUST ACT

Section 1. NEW SECTION. 633F.1 Definitions.

For purposes of this chapter:

1. "*Adult*" means an individual who is at least eighteen years of age.

2. "*Beneficiary*" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this chapter.

3. "*Consent*" means affirmation given by a person who is not incapacitated; or if a person is incapacitated and there is no conflict of interest between the representer and the incapacitated person with respect to the fiduciary manner, the following may consent on behalf of the incapacitated individual:

a. A conservator may represent and bind the person whose estate the conservator controls.

b. A trustee may represent and bind the beneficiary of a trust.

c. A personal representative may represent and bind the persons interested in the decedent's estate.

d. If no conservator has been appointed, a parent may represent and bind a minor child.

4. "*Conservator*" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.

5. "*Court*" means the probate court of this state.

6. "*Custodial trust property*" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this chapter and the income from and proceeds of that interest.

7. "*Custodial trustee*" means a person designated as trustee of a custodial trust under this chapter or a substitute or successor to the person designated.

1 8. "*Guardian*" means a person appointed or qualified by
2 a court as a guardian of an individual, including a limited
3 guardian, but not a person who is only a court visitor.

4 9. "*Incapacitated*" means the inability of an individual to
5 manage property or business affairs because the individual is
6 any of the following:

7 a. An individual whose decision-making is so impaired that
8 the individual is unable to make, communicate, or carry out
9 important decisions concerning the individual's financial
10 affairs.

11 b. Detailed or incarcerated in a penal system.

12 c. Outside the United States and unable to return.

13 d. A minor.

14 10. "*Legal representative*" means a living person's
15 agent acting under a durable financial power of attorney or
16 conservator, a living or deceased person's trustee acting
17 under a revocable trust created by such person, or a deceased
18 person's personal representative.

19 11. "*Member of the beneficiary's family*" means the following
20 persons who are competent adults at the time of acting
21 hereunder, with such action to be taken in the following order
22 of priority:

23 a. The surviving spouse, if not legally separated from the
24 beneficiary, whose whereabouts are reasonably ascertainable.

25 b. The surviving child of the beneficiary, or, if there
26 is more than one, a majority of the surviving children whose
27 whereabouts are reasonably ascertainable.

28 c. The surviving parents of the beneficiary whose
29 whereabouts are reasonably ascertainable.

30 d. A surviving grandchild of the beneficiary, or if there is
31 more than one, a majority of the surviving grandchildren whose
32 whereabouts are reasonably ascertainable.

33 e. A surviving sibling of the beneficiary, or if there
34 is more than one, a majority of the surviving siblings whose
35 whereabouts are reasonably ascertainable.

1 *f.* A surviving grandparent of the beneficiary, or if there
2 is more than one, a majority of the surviving grandparents
3 whose whereabouts are reasonably ascertainable.

4 *g.* A person in the next degree of kinship to the beneficiary
5 in the order named by law who would inherit the estate of
6 the beneficiary under the rules of inheritance for intestate
7 succession, or if there is more than one, a majority of
8 such surviving persons whose whereabouts are reasonably
9 ascertainable.

10 12. "*Person*" means an individual, corporation, business
11 trust, estate, trust, partnership, joint venture, association,
12 or any other legal or commercial entity.

13 13. "*Personal representative*" means an executor,
14 administrator, or special administrator of a decedent's estate,
15 a person legally authorized to perform substantially the same
16 functions, or a successor to any of them as defined in section
17 633.3.

18 14. "*State*" means a state, territory, or possession of the
19 United States, the District of Columbia, or the Commonwealth
20 of Puerto Rico.

21 15. "*Transferor*" means a person who creates a custodial
22 trust by transfer or declaration.

23 16. "*Trust company*" means a financial institution,
24 corporation, or other legal entity, authorized to exercise
25 general trust powers.

26 Sec. 2. NEW SECTION. 633F.2 Custodial trust — general.

27 1. A person may create a custodial trust of property by a
28 written transfer of the property to another person, evidenced
29 by registration or by other instrument of transfer, executed in
30 any lawful manner, naming as beneficiary, an individual who may
31 be the transferor, in which the transferee is designated, in
32 substance, as custodial trustee under this chapter.

33 2. A person may create a custodial trust of property by a
34 written declaration, evidenced by registration of the property
35 or by other instrument of declaration executed in any lawful

1 manner, describing the property and naming as beneficiary an
2 individual other than the declarant, in which the declarant as
3 titleholder is designated, in substance, as custodial trustee
4 under this chapter. A registration or other declaration of
5 trust for the sole benefit of the declarant is not a custodial
6 trust under this chapter.

7 3. Title to custodial trust property is in the custodial
8 trustee and the beneficial interest is in the beneficiary.

9 4. Except as provided in subsection 5, a transferor shall
10 not terminate a custodial trust.

11 5. The beneficiary, if not incapacitated, or the legal
12 representative of an incapacitated beneficiary, may terminate
13 a custodial trust by delivering to the custodial trustee a
14 writing signed by the beneficiary or legal representative
15 declaring the termination. If not previously terminated, the
16 custodial trust terminates on the death of the beneficiary.

17 6. Any person may augment existing custodial trust property
18 by the addition of other property pursuant to this chapter,
19 only upon receipt and acceptance by the custodial trustee.

20 7. The transferor may designate, or authorize the
21 designation of, a successor custodial trustee in the trust
22 instrument.

23 8. This chapter does not displace or restrict other means
24 of creating trusts. A trust whose terms do not conform to this
25 chapter may be enforceable according to its terms under other
26 law.

27 **Sec. 3. NEW SECTION. 633F.4 Custodial trustee for future**
28 **payment or transfer.**

29 1. A person having the right to designate the recipient of
30 property payable or transferable upon a future event may create
31 a custodial trust upon the occurrence of the future event by
32 designating in writing the recipient, followed in substance
33 by: "as custodial trustee for _____ (name of
34 beneficiary) under the Iowa Uniform Custodial Trust Act".

35 2. Persons may be designated as substitute or successor

1 custodial trustees to whom the property must be paid or
2 transferred in the order named if the first designated
3 custodial trustee is unable or unwilling to serve.

4 3. A designation under this section may be made in a will,
5 a trust, a multiple-party account, an insurance policy, an
6 instrument exercising a power of appointment, or a writing
7 designating a beneficiary of contractual rights. Otherwise,
8 to be effective, the designation must be registered with or
9 delivered to the fiduciary, payor, issuer, or obligor of the
10 future right.

11 Sec. 4. NEW SECTION. 633F.4 Form and effect of receipt and
12 acceptance by custodial trustee — jurisdiction.

13 1. Obligations of a custodial trustee, including the
14 obligation to follow directions of the beneficiary, arise under
15 this chapter upon the custodial trustee's acceptance, express
16 or implied, of the custodial trust property.

17 2. The custodial trustee's acceptance may be evidenced by a
18 writing stating in substance:

19 CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

20 I, _____ (name of custodial trustee) acknowledge receipt
21 of the custodial trust property described below or in the
22 attached instrument and accept the custodial trust as custodial
23 trustee for _____ (name of beneficiary) under the
24 Iowa Uniform Custodial Trust Act. I undertake to administer
25 and distribute the custodial trust property pursuant to the
26 Iowa Uniform Custodial Trust Act. My obligations as custodial
27 trustee are subject to the directions of the beneficiary
28 unless the beneficiary is designated as, is, or becomes
29 incapacitated. The custodial trust property consists of
30 _____.

31 Dated: _____
32 (Signature of Custodial Trustee)

33 3. Upon accepting custodial trust property, a person
34 designated as custodial trustee under this chapter is subject
35 to personal jurisdiction of the court with respect to any

1 matter relating to the custodial trust.

2 Sec. 5. NEW SECTION. 633F.5 **Transfer to custodial trustee**
3 **by fiduciary or obligor — facility of payment.**

4 1. Unless otherwise directed by an instrument designating
5 a custodial trustee pursuant to section 633F.3, a person,
6 including a fiduciary other than a custodial trustee, who holds
7 property of or owes a debt to an incapacitated individual may
8 make a transfer to a beneficiary's legal representative and
9 if none, to a member of the beneficiary's family, or a trust
10 company, as custodial trustee for the use and benefit of the
11 incapacitated individual. If the value of the property or
12 the debt exceeds fifty thousand dollars, the transfer is not
13 effective unless authorized by the court.

14 2. A written acknowledgment of delivery, signed by a
15 custodial trustee, is a sufficient receipt and discharge for
16 property transferred to the custodial trustee pursuant to this
17 section.

18 Sec. 6. NEW SECTION. 633F.6 **Single beneficiaries —**
19 **separate trust accounts.**

20 1. Beneficial interests in a custodial trust shall not be
21 created for multiple beneficiaries.

22 2. All custodial trust property held under this chapter by
23 the same custodial trustee for the use and benefit of a single
24 beneficiary may be administered as a single custodial trust.

25 Sec. 7. NEW SECTION. 633F.7 **General duties of custodial**
26 **trustee.**

27 1. If appropriate, a custodial trustee shall register
28 or record the instrument vesting title to custodial trust
29 property.

30 2. If the beneficiary is not incapacitated, a custodial
31 trustee shall follow the directions of the beneficiary in the
32 management, control, investment, or retention of the custodial
33 trust property. In the absence of effective contrary direction
34 by the beneficiary while not incapacitated, the custodial
35 trustee shall observe the prudent investment standards set

1 forth in section 633.123. However, a custodial trustee, in the
2 custodial trustee's discretion, may retain any custodial trust
3 property received from the transferor. If a custodial trustee
4 has a special skill or expertise or is named custodial trustee
5 on the basis of representation of a special skill or expertise,
6 the custodial trustee shall use that skill or expertise.

7 3. Subject to subsection 2, a custodial trustee shall take
8 control of and collect, hold, manage, invest, and reinvest
9 custodial trust property.

10 4. A custodial trustee at all times shall keep custodial
11 trust property of which the custodial trustee has control,
12 separate from all other property in a manner sufficient
13 to identify it clearly as custodial trust property of the
14 beneficiary. Custodial trust property, the title to which is
15 subject to recordation, is so identified if an appropriate
16 instrument so identifying the property is recorded, and
17 custodial trust property subject to registration is so
18 identified if it is registered, or held in an account in the
19 name of the custodial trustee, designated in substance: "as
20 custodial trustee for _____ (name of beneficiary)
21 under the Iowa Uniform Custodial Trust Act".

22 5. A custodial trustee shall keep records of all
23 transactions with respect to custodial trust property,
24 including information necessary for the preparation of tax
25 returns, and shall make the records and information available
26 at reasonable times to the beneficiary or legal representative
27 of the beneficiary.

28 6. The exercise of a durable power of attorney for an
29 incapacitated beneficiary is not effective to terminate or
30 direct the administration or distribution of a custodial trust.

31 **Sec. 8. NEW SECTION. 633F.8 General powers of custodial**
32 **trustee.**

33 1. A custodial trustee, acting in a fiduciary capacity, has
34 all the rights and powers over custodial trust property which
35 an unmarried adult owner has over individually owned property,

1 but a custodial trustee may exercise those rights and powers
2 in a fiduciary capacity only.

3 2. This section does not relieve a custodial trustee from
4 liability for a violation of section 633F.7.

5 **Sec. 9. NEW SECTION. 633F.9 Use of custodial trust**
6 **property.**

7 1. A custodial trustee shall pay to the beneficiary or
8 expend for the beneficiary's use and benefit so much or all
9 of the custodial trust property as the beneficiary while not
10 incapacitated may direct from time to time.

11 2. If the beneficiary is incapacitated, the custodial
12 trustee shall expend so much or all of the custodial trust
13 property as the custodial trustee considers advisable for the
14 use and benefit of the beneficiary and individuals who are
15 legally entitled to support by the beneficiary. Expenditures
16 may be made in the manner, when, and to the extent that the
17 custodial trustee determines suitable and proper, without court
18 order and without regard to other support, income, or property
19 of the beneficiary.

20 3. To facilitate distributions to the beneficiary, a
21 custodial trustee may establish checking, savings, or other
22 similar accounts of reasonable amounts under which either
23 the custodial trustee or the beneficiary, if authorized, may
24 withdraw funds from, or draw checks against, the accounts in
25 amounts authorized by the custodian. Funds withdrawn from,
26 or checks written against, the account by the beneficiary are
27 distributions of custodial trust property by the custodial
28 trustee to the beneficiary.

29 **Sec. 10. NEW SECTION. 633F.10 Determination of incapacity**
30 **— effect.**

31 1. The custodial trustee shall administer the custodial
32 trust as for an incapacitated beneficiary in any of the
33 following circumstances:

- 34 a. The custodial trust was created under section 633F.5.
- 35 b. The transferor has so directed in the instrument creating

1 the custodial trust.

2 *c.* The custodial trustee has determined that the beneficiary
3 is incapacitated.

4 2. A custodial trustee may determine that the beneficiary is
5 incapacitated in reliance upon any of the following:

6 *a.* Previous direction or authority given by the beneficiary
7 while not incapacitated, including direction or authority
8 pursuant to a durable power of attorney.

9 *b.* Written documentation from the beneficiary's physician.

10 *c.* Other persuasive evidence.

11 3. If a custodial trustee for an incapacitated beneficiary
12 reasonably concludes that the beneficiary's incapacity has
13 ceased, or that circumstances concerning the beneficiary's
14 ability to manage property and business affairs have
15 changed since the creation of a custodial trust directing
16 administration as for an incapacitated beneficiary, the
17 custodial trustee may administer the trust as for a beneficiary
18 who is not incapacitated.

19 4. On petition of the beneficiary, the custodial trustee, or
20 other person interested in the custodial trust property or the
21 welfare of the beneficiary, the court shall determine whether
22 the beneficiary is incapacitated.

23 5. Absent determination of incapacity of the beneficiary
24 under subsection 2 or 4, a custodial trustee who has reason to
25 believe that the beneficiary is incapacitated shall administer
26 the custodial trust in accordance with the provisions of this
27 chapter applicable to an incapacitated beneficiary.

28 6. Incapacity of a beneficiary does not terminate the
29 custodial trust, any designation of a successor custodial
30 trustee, rights or powers of the custodial trustee, or any
31 immunities of third persons acting on instructions of the
32 custodial trustee.

33 Sec. 11. NEW SECTION. 633F.11 **Exemption of third person**
34 **from liability.**

35 1. A third person in good faith and without a court order

1 may act on instructions of, or otherwise deal with, a person
2 purporting to make a transfer as, or purporting to act in the
3 capacity of, a custodial trustee.

4 2. A third person who receives instructions from the
5 purported custodial trustee may require such custodial trustee
6 to provide proof of their identity and a certification of trust
7 or copies of those excerpts from the original trust instrument
8 and amendments to the original trust instrument which designate
9 the currently acting custodial trustee and confer upon the
10 custodial trustee the power to act in the pending transaction.

11 3. If a certification of trust is provided, it must do all
12 of the following:

13 a. State the names of all the currently acting trustees.

14 b. If there is more than one currently acting trustee,
15 state whether the trustees may act individually or must act by
16 majority decision or must act by unanimous decision.

17 c. State that the trust has not been revoked, modified, or
18 amended in any manner that would cause the representations in
19 the certification of trust to be incorrect.

20 d. Be signed by a currently acting trustee or the attorney
21 of a currently acting trustee.

22 e. Be dated and certified under penalty of perjury and
23 pursuant to the laws of the state of Iowa that it is true and
24 correct, or subscribed and sworn to under penalty of perjury
25 before a notary public as provided in chapter 9B.

26 f. A third person who acts in reliance upon the information
27 provided by the custodial trustee, after taking reasonable
28 steps to verify the identity of the custodial trustee and
29 without knowledge that the representations contained in the
30 certification are incorrect, is not liable to any person
31 for so acting and may assume without inquiry the existence
32 of the facts contained in the certification. The period of
33 time to verify the identity of the trustee shall not exceed
34 ten business days from the date the third person received
35 the requested information. Knowledge shall not be inferred

1 solely from the fact that a copy of all or part of the trust
2 instrument is held by the third person relying upon the
3 trust certification. A transaction, and a lien created by a
4 transaction, entered into by the custodial trustee and a person
5 acting in reliance upon a certification of trust is enforceable
6 against the trust assets.

7 4. A third person who makes a demand for information from
8 the custodial trustee beyond that set forth in subsection
9 2 shall be liable for damages, including attorney fees,
10 incurred as a result of the refusal to accept the information
11 provided, if the court determines that the third person acted
12 unreasonably in requesting such additional information.

13 5. If a custodial trustee has provided the information set
14 forth in subsection 2, and the third person refuses to follow
15 the instructions provided by the custodial trustee within the
16 time period set forth in subsection 4, the custodial trustee
17 may bring an action under this subsection and the court may
18 award any or all of the following to the custodial trustee:

19 a. Any damages sustained by the trust.

20 b. The costs of the action.

21 c. A penalty in an amount of not less than five hundred
22 dollars and not more than ten thousand dollars.

23 d. Reasonable attorney fees, based on the value of the time
24 reasonably expended by the attorney and not on the amount of
25 the recovery on behalf of the custodial trustee.

26 6. An action shall not be brought under this subsection more
27 than one year after the date of the occurrence of the alleged
28 violation.

29 Sec. 12. NEW SECTION. 633F.12 Liability to third person.

30 1. A claim based on a contract entered into by a custodial
31 trustee acting in a fiduciary capacity, an obligation arising
32 from the ownership or control of custodial trust property, or
33 a tort committed in the course of administering the custodial
34 trust, may be asserted by a third person against the custodial
35 trust property by proceeding against the custodial trustee in a

1 fiduciary capacity, whether or not the custodial trustee or the
2 beneficiary is personally liable.

3 2. A custodial trustee is not personally liable to a third
4 person for any of the following:

5 a. On a contract properly entered into in a fiduciary
6 capacity unless the custodial trustee fails to reveal that
7 capacity or to identify the custodial trust in the contract.

8 b. For an obligation arising from control of custodial
9 trust property or for a tort committed in the course of the
10 administration of the custodial trust unless the custodial
11 trustee is personally at fault.

12 3. A beneficiary is not personally liable to a third
13 person for an obligation arising from beneficial ownership of
14 custodial trust property or for a tort committed in the course
15 of administration of the custodial trust unless the beneficiary
16 is personally in possession of the custodial trust property
17 giving rise to the liability or is personally at fault.

18 4. Subsections 2 and 3 do not preclude actions or
19 proceedings to establish liability of the custodial trustee or
20 beneficiary to the extent the person sued is protected as the
21 insured by liability insurance.

22 Sec. 13. NEW SECTION. 633F.13 **Declination, resignation,**
23 **incapacity, death, or removal of custodial trustee — designation**
24 **of successor custodial trustee.**

25 1. Before accepting the custodial trust property, a person
26 designated as custodial trustee may decline to serve by
27 notifying the person who made the designation, the transferor,
28 or the transferor's legal representative. If an event giving
29 rise to a transfer has not occurred, the substitute custodial
30 trustee designated under section 633F.3 becomes the custodial
31 trustee, or, if a substitute custodial trustee has not been
32 designated, the person who made the designation may designate
33 a substitute custodial trustee pursuant to section 633F.3.
34 In other cases, the transferor or the transferor's legal
35 representative may designate a substitute custodial trustee.

1 2. A custodial trustee who has accepted the custodial trust
2 property may resign by doing all of the following:

3 *a.* Delivering written notice to a successor custodial
4 trustee, if any, the beneficiary and, if the beneficiary is
5 incapacitated, to the beneficiary's legal representative, if
6 any.

7 *b.* Transferring or registering, or recording an appropriate
8 instrument relating to, the custodial trust property, in the
9 name of, and delivering the records to, the successor custodial
10 trustee identified under subsection 3.

11 3. If a custodial trustee or successor custodial trustee
12 is ineligible, resigns, dies, or becomes incapacitated, the
13 successor designated under section 633F.2, subsection 7, or
14 section 633F.3 becomes custodial trustee. If there is no
15 effective provision for a successor, the beneficiary if not
16 incapacitated, or the legal representative of an incapacitated
17 beneficiary, may designate a successor custodial trustee. If
18 the beneficiary is not incapacitated, but fails to act within
19 ninety days after the ineligibility, resignation, death, or
20 incapacity of the custodial trustee, or if the beneficiary
21 is incapacitated and the beneficiary's legal representative
22 fails to act within ninety days after the ineligibility,
23 resignation, death, or incapacity of the custodial trustee,
24 then the beneficiary's legal representative becomes successor
25 custodial trustee. If the beneficiary does not have a legal
26 representative or the legal representative fails to act, the
27 resigning custodial trustee may designate a successor custodial
28 trustee.

29 4. If a successor custodial trustee is not designated
30 pursuant to subsection 3, the transferor, the legal
31 representative of the transferor or of the custodial trustee,
32 a beneficiary's legal representative and if none, a member of
33 the beneficiary's family, a person interested in the custodial
34 trust property may petition the court to designate a successor
35 custodial trustee.

1 5. A custodial trustee who declines to serve or resigns,
2 or the legal representative of a deceased or incapacitated
3 custodial trustee, as soon as practicable, shall put the
4 custodial trust property and records in the possession and
5 control of the successor custodial trustee. The successor
6 custodial trustee may enforce the obligation to deliver
7 custodial trust property and records and becomes responsible
8 for each item as received.

9 6. A substitute custodial trustee designated under section
10 633F.3, the beneficiary, the beneficiary's legal representative
11 and if none, a member of the beneficiary's family, a person
12 interested in the custodial trust property, may petition the
13 court to remove the custodial trustee for cause and designate
14 a successor custodial trustee, to require the custodial
15 trustee to furnish a bond or other security for the faithful
16 performance of fiduciary duties, or for other appropriate
17 relief.

18 Sec. 14. NEW SECTION. 633F.14 **Expenses, compensation, and**
19 **bond of custodial trustee.**

20 Except as otherwise provided in the instrument creating the
21 custodial trust, in an agreement with the beneficiary, or by
22 court order, all of the following are true:

23 a. A custodial trustee is entitled to reimbursement from
24 custodial trust property for reasonable expenses incurred in
25 the performance of fiduciary services.

26 b. A custodial trustee has a noncumulative election, to be
27 made no later than six months after the end of each calendar
28 year, to charge a reasonable compensation for fiduciary
29 services performed during that year.

30 c. A custodial trustee need not furnish a bond or other
31 security for the faithful performance of fiduciary duties.

32 Sec. 15. NEW SECTION. 633F.15 **Reporting and accounting**
33 **by custodial trustee — determination of liability of custodial**
34 **trustee.**

35 1. Upon the acceptance of custodial trust property, the

1 custodial trustee shall provide a written statement describing
2 the custodial trust property and shall thereafter provide a
3 written statement of the administration of the custodial trust
4 property as follows:

5 *a.* Once each year.

6 *b.* Upon request at reasonable times, but not more than
7 quarterly during any calendar year, by the beneficiary or the
8 beneficiary's legal representative.

9 *c.* Upon resignation or removal of the custodial trustee.

10 *d.* Upon termination of the custodial trust.

11 2. The statements must be provided to the beneficiary
12 or to the beneficiary's legal representative, if any. Upon
13 termination of the beneficiary's interest, the custodial
14 trustee shall furnish a current statement to the person to whom
15 the custodial trust property is to be delivered.

16 3. A substitute or successor custodial trustee designated
17 under section 633F.3, a beneficiary, the beneficiary's legal
18 representative, a member of the beneficiary's family, or a
19 person interested in the custodial trust property may petition
20 the court for an accounting by the custodial trustee or the
21 custodial trustee's legal representative.

22 4. A successor custodial trustee may petition the court for
23 an accounting by a predecessor custodial trustee.

24 5. In an action or proceeding under this chapter or in any
25 other proceeding, the court may require or permit the custodial
26 trustee or the custodial trustee's legal representative to
27 account. The custodial trustee or the custodial trustee's
28 legal representative may petition the court for approval of
29 final accounts.

30 6. If a custodial trustee is removed, the court shall
31 require an accounting and order delivery of the custodial trust
32 property and records to the successor custodial trustee and
33 the execution of all instruments required for transfer of the
34 custodial trust property.

35 7. On petition of the custodial trustee or any person who

1 could petition for an accounting, the court, after notice to
2 interested persons, may issue instructions to the custodial
3 trustee or review the propriety of the acts of a custodial
4 trustee or the reasonableness of compensation determined by the
5 custodial trustee for the services of the custodial trustee or
6 others.

7 Sec. 16. NEW SECTION. 633F.16 **Limitations of action against**
8 **custodial trustee.**

9 1. Except as provided in subsection 3, unless previously
10 barred by adjudication, consent, or limitation, a claim for
11 relief against a custodial trustee for accounting or breach of
12 duty is barred as to a beneficiary, a person to whom custodial
13 trust property is to be paid or delivered, or the legal
14 representative of an incapacitated or deceased beneficiary or
15 payee who either:

16 a. Has received an accounting or other statement adequately
17 disclosing the matter unless an action or proceeding to assert
18 the claim is commenced within one year after receipt of such
19 accounting or statement.

20 b. Has not received an accounting or other statement
21 adequately disclosing the matter unless an action or proceeding
22 to assert the claim is commenced within three years after the
23 termination of the custodial trust.

24 2. For the purpose of subsection 1, a beneficiary or a
25 person to whom custodial trust property is to be paid or
26 delivered, is deemed to have received an accounting or other
27 statement, in the following instances:

28 a. In the case of an adult who is reasonably capable of
29 understanding the accounting or other statement if it is
30 personally received by such person.

31 b. In the case of an adult who is not reasonably capable
32 of understanding the accounting or other statement, if it is
33 received by such adult person's legal representative, and if
34 none, then if received by a guardian ad litem, court visitor,
35 or other person appointed for this purpose.

1 *c.* In the case of a minor, if it is received by a person who
2 has authority to consent on the minor's behalf, and if none,
3 then if received by a guardian ad litem, court visitor, or
4 other person appointed for this purpose.

5 3. Except as provided in subsection 4, a claim for relief to
6 recover from a custodial trustee for fraud, misrepresentation,
7 or concealment related to the final settlement of the custodial
8 trust or concealment of the existence of the custodial trust,
9 is barred unless an action or proceeding to assert the claim
10 is commenced within five years after the termination of the
11 custodial trust.

12 4. Unless an accounting or other statement adequately
13 disclosing the matter was provided as set forth above, a claim
14 for relief is not barred by this section if the claimant is or
15 was any of the following:

16 *a.* A minor, until the earlier of one year after the claimant
17 becomes an adult or dies; an incapacitated adult, until the
18 earliest of one year after the following:

19 (1) The appointment of a legal representative.

20 (2) The removal of the incapacity.

21 (3) The death of the claimant.

22 *b.* An adult, now deceased, who was not incapacitated, until
23 one year after the claimant's death.

24 Sec. 17. NEW SECTION. 633F.17 Distribution on termination.

25 1. Upon termination of a custodial trust, the custodial
26 trustee shall transfer the unexpended custodial trust property:

27 *a.* To the beneficiary, if not incapacitated or deceased.

28 *b.* To the beneficiary's legal representative or other
29 recipient designated by the court for an incapacitated
30 beneficiary.

31 *c.* Upon the beneficiary's death, in the following order:

32 (1) As last directed in a writing signed by the deceased
33 beneficiary while not incapacitated and received by the
34 custodial trustee during the life of the deceased.

35 (2) As designated in the instrument creating the custodial

1 trust.

2 (3) To the estate of the deceased beneficiary.

3 2. The direction to the custodial trustee by a beneficiary
4 who is not incapacitated, for distribution on termination
5 of the custodial trust may be in any written form clearly
6 identifying the distributee and may be substantially similar
7 to the following:

8 I, _____ (name of beneficiary) hereby direct
9 _____ (name of custodial trustee) as custodial
10 trustee, to transfer and pay the unexpended balance of
11 the custodial trust property of which I am beneficiary to
12 _____ as distributee on the termination of the
13 trust at my death. In the event of the prior death of _____
14 above named as distributee, I designate _____ as
15 distributee of the custodial trust property.

16 Signed _____ (signature of beneficiary).

17 Date _____

18 Receipt Acknowledged: _____ (signature of
19 Custodial Trustee)

20 Date _____

21 3. If, when the custodial trust would otherwise terminate,
22 the distributee is incapacitated, the custodial trust continues
23 for the use and benefit of the distributee as beneficiary until
24 the incapacity is removed or the custodial trust is otherwise
25 terminated.

26 4. Death of a beneficiary does not terminate the power of
27 the custodial trustee to discharge obligations of the custodial
28 trustee or beneficiary incurred before the termination of the
29 custodial trust.

30 **Sec. 18. NEW SECTION. 633F.18 Methods and forms for**
31 **creating custodial trusts.**

32 1. If a transaction, including a declaration with respect
33 to or a transfer of specific property, otherwise satisfies
34 applicable law, the criteria of section 633F.2 are satisfied
35 by any of the following:

1 a. The execution and either delivery to the custodial
2 trustee or recording of an instrument in substantially the
3 following form:

4 TRANSFER UNDER THE IOWA UNIFORM CUSTODIAL TRUST ACT

5 I, _____ (name of transferor or name and representative
6 capacity if a fiduciary), transfer to _____ (name of
7 trustee other than transferor), as custodial trustee for
8 _____ (name of beneficiary) as beneficiary and _____
9 as distributee on termination of the trust in absence of
10 direction by the beneficiary under the Iowa Uniform Custodial
11 Trust Act, the following:

12 _____ (Insert a description of the custodial trust
13 property legally sufficient to identify and transfer each item
14 of property).

15 If _____ (name of trustee other than transferor)
16 declines to serve or ceases to serve as custodial trustee for
17 any reason, then I designate _____ (name of substitute
18 or successor custodial trustee) as substitute or successor
19 custodial trustee.

20 Dated: _____

21 Signature: _____

22 b. The execution and the recording or giving notice of its
23 execution to the beneficiary of an instrument in substantially
24 the following form:

25 DECLARATION OF TRUST UNDER IOWA UNIFORM CUSTODIAL TRUST ACT

26 I, _____ (name of owner of property), declare that
27 henceforth I hold as custodial trustee for _____ (name of
28 beneficiary other than transferor) as beneficiary and _____
29 as distributee on termination of the trust in absence of
30 direction by the beneficiary under the Iowa Uniform Custodial
31 Trust Act, the following: _____ (Insert a description of
32 the custodial trust property legally sufficient to identify
33 and transfer each item of property). If I cease to serve as
34 custodial trustee for any reason, then I designate _____
35 (name of substitute or successor custodial trustee) as

1 successor custodial trustee.

2 Dated: _____

3 Signature: _____

4 2. Customary methods of transferring or evidencing
5 ownership of property may be used to create a custodial trust,
6 including any of the following:

7 a. Registration of a security in the name of a trust
8 company, an adult other than the transferor, or the transferor
9 if the beneficiary is other than the transferor, designated in
10 substance "as custodial trustee for _____ (name of
11 beneficiary) under the Iowa Uniform Custodial Trust Act".

12 b. Delivery of a certificated security, or a document
13 necessary for the transfer of an uncertificated security,
14 together with any necessary endorsement, to an adult other than
15 the transferor or to a trust company as custodial trustee,
16 accompanied by an instrument in substantially the form
17 prescribed in subsection 1, paragraph "a".

18 c. Payment of money or transfer of a security held in the
19 name of a broker or a financial institution or its nominee to a
20 broker or financial institution for credit to an account in the
21 name of a trust company, an adult other than the transferor,
22 or the transferor if the beneficiary is other than the
23 transferor, designated in substance: "as custodial trustee for
24 _____ (name of beneficiary) under the Iowa Uniform
25 Custodial Trust Act".

26 d. Registration of ownership of a life or endowment
27 insurance policy or annuity contract with the issuer in the
28 name of a trust company, an adult other than the transferor,
29 or the transferor if the beneficiary is other than the
30 transferor, designated in substance: "as custodial trustee for
31 _____ (name of beneficiary) under the Iowa Uniform
32 Custodial Trust Act".

33 e. Delivery of a written assignment to an adult other
34 than the transferor or to a trust company whose name in the
35 assignment is designated in substance by the words: "as

1 custodial trustee for _____ (name of beneficiary)
2 under the Iowa Uniform Custodial Trust Act".

3 *f.* Irrevocable exercise of a power of appointment, pursuant
4 to its terms, in favor of a trust company, an adult other than
5 the donee of the power, or the donee who holds the power if
6 the beneficiary is other than the donee, whose name in the
7 appointment is designated in substance: "as custodial trustee
8 for (name of beneficiary) under the Iowa Uniform Custodial
9 Trust Act".

10 *g.* Delivery of a written notification or assignment of a
11 right to future payment under a contract to an obligor which
12 transfers the right under the contract to a trust company,
13 an adult other than the transferor, or the transferor if the
14 beneficiary is other than the transferor, whose name in the
15 notification or assignment is designated in substance: "as
16 custodial trustee for _____ (name of beneficiary)
17 under the Iowa Uniform Custodial Trust Act".

18 *h.* Execution, delivery, and recordation of a conveyance of
19 an interest in real property in the name of a trust company,
20 an adult other than the transferor, or the transferor if
21 the beneficiary is other than the transferor, designated in
22 substance: "as custodial trustee for _____ (name of
23 beneficiary) under the Iowa Uniform Custodial Trust Act".

24 *i.* Issuance of a certificate of title by an agency of a
25 state or of the United States which evidences title to tangible
26 personal property:

27 (1) Issued in the name of a trust company, an adult other
28 than the transferor, or the transferor if the beneficiary
29 is other than the transferor, designated in substance: "as
30 custodial trustee for _____ (name of beneficiary)
31 under the Iowa Uniform Custodial Trust Act".

32 (2) Delivered to a trust company or an adult other
33 than the transferor or endorsed by the transferor to that
34 person, designated in substance: "as custodial trustee for
35 _____ (name of beneficiary) under the Iowa Uniform

1 Custodial Trust Act”.

2 *j.* Execution and delivery of an instrument of gift to a
3 trust company or an adult other than the transferor, designated
4 in substance: “as custodial trustee for _____ (name
5 of beneficiary) under the Iowa Uniform Custodial Trust Act”.

6 Sec. 19. NEW SECTION. 633F.19 **Applicable law.**

7 1. This chapter applies to a transfer or declaration
8 creating a custodial trust that refers to this chapter if,
9 at the time of the transfer or declaration, the transferor,
10 beneficiary, or custodial trustee is a resident of or has its
11 principal place of business in this state or custodial trust
12 property is located in this state. The custodial trust remains
13 subject to this chapter despite a later change in residence or
14 principal place of business of the transferor, beneficiary, or
15 custodial trustee, or removal of the custodial trust property
16 from this state.

17 2. A transfer made pursuant to an act of another state
18 substantially similar to this chapter is governed by the law of
19 that state and may be enforced in this State.

20 Sec. 20. NEW SECTION. 633F.20 **Uniformity of application**
21 **and construction.**

22 This chapter shall be applied and construed to effectuate
23 its general purpose to make uniform the law with respect to the
24 subject of this chapter among states enacting it.

25 Sec. 21. NEW SECTION. 633F.21 **Short title.**

26 This chapter shall be known and may be cited as the “*Iowa*
27 *Uniform Custodial Trust Act*”.

28 DIVISION II

29 CONFORMING CHANGES

30 Sec. 22. Section 232D.503, Code 2021, is amended by adding
31 the following new subsection:

32 NEW SUBSECTION. 6. If the court orders termination of a
33 guardianship established under this chapter and the guardian
34 has custody of any assets of a protected person who is a minor
35 or was a minor at the time of the minor’s death, the court

1 shall order delivery of the minors assets to the minor or to a
2 fiduciary acting under one or more of the following:

3 a. A conservatorship established for the minor.

4 b. A personal representative appointed as a result of the
5 minor's death.

6 c. A uniform transfer to minor account established for the
7 minor pursuant to chapter 565B or the laws of any other state.

8 d. A uniform custodial trust account established for the
9 minor pursuant to chapter 633F or the laws of any other state.

10 e. A college savings plan account established for the minor
11 pursuant to Internal Revenue Code section 529 or Chapter 12D
12 or the laws of any other state.

13 f. An ABLE account established for the minor with
14 disabilities pursuant to Internal Revenue Code section 529A or
15 chapter 12I or the laws of any other state.

16 Sec. 23. Section 565B.6, subsection 3, paragraph c, Code
17 2021, is amended to read as follows:

18 c. The transfer is authorized by the court if all transfers,
19 including the transfer to be made and prior transfers, exceed
20 ~~twenty-five~~ fifty thousand dollars in value. Transfers by a
21 personal representative, trustee, or conservator shall not
22 be aggregated, but each personal representative, trustee, or
23 conservator shall be treated separately.

24 Sec. 24. Section 633.108, Code 2021, is amended to read as
25 follows:

26 **633.108 Small distributions to minors — payment.**

27 1. Whenever a ~~minor~~ person becomes entitled under the terms
28 of a will to a bequest or legacy, or to a share of the estate of
29 an intestate, and the value of the bequest, legacy, or share
30 does not exceed the sum of ~~twenty-five~~ fifty thousand dollars,
31 the personal representative may pay the bequest, legacy, or
32 ~~share to a custodian under any uniform transfers to minors~~
33 Act interest to a fiduciary acting under one or more of the
34 accounts referenced in subsection 2.

35 2. Receipt by the custodian, when presented to the court or

1 filed with the report of distribution of the fiduciary, shall
2 have the same force and effect as though the payment had been
3 made to a duly appointed and qualified conservator for the
4 ~~minor.~~ person entitled to them:

5 a. A uniform transfer to minor account established for the
6 minor pursuant to chapter 565B or the laws of any other state.

7 b. A uniform custodial trust account established for the
8 minor pursuant to chapter 633F or the laws of any other state.

9 c. A college savings plan account established for the minor
10 pursuant to Internal Revenue Code section 529 or chapter 12D.

11 d. An ABLE account established for the minor with
12 disabilities pursuant to Internal Revenue Code section 529A or
13 chapter 12I.

14 Sec. 25. Section 633.675, Code 2021, is amended by adding
15 the following new subsection:

16 NEW SUBSECTION. 3A. The court shall terminate a
17 conservatorship if it finds by clear and convincing evidence
18 all of the following:

19 a. The value of the protected person's property is
20 insufficient to justify the cost of administration.

21 b. That continued administration of the conservatorship is
22 not in the best interest of the protected person.

23 c. That a reasonable alternative exists under section
24 633.678 for managing the protected person's assets.

25 Sec. 26. Section 633.678, Code 2021, is amended to read as
26 follows:

27 **633.678 Delivery of assets.**

28 1. Upon the termination of a conservatorship, all assets of
29 the conservatorship shall be delivered, ~~under direction of the~~
30 court, ~~to~~ as ordered by the court to any of the following:

31 a. To the person or persons entitled to them.

32 b. To a custodian under a uniform transfers to minor account
33 established for the protected person pursuant to chapter 565B
34 or the laws of any other state.

35 c. To a custodial trustee under a uniform custodial trust

1 account established for the protected person pursuant to
2 chapter 633F or the laws of any other state.

3 d. To an account owner or participant under a college
4 savings plan account established for the protected person
5 pursuant to Internal Revenue Code section 529 or chapter 12D
6 or the laws of any other state.

7 e. To the account owner under an ABLE account established
8 for the protected person with disabilities pursuant to Internal
9 Revenue Code section 529A or chapter 12I or the laws of any
10 other state.

11 2. Delivery of the assets of an adult protected person under
12 subsection 1, paragraphs "b" through "e", shall have the same
13 force and effect as if delivery had been made directly to the
14 person or persons entitled to them. Delivery of the assets of
15 a minor protected person under subsection 1, paragraphs "b"
16 through "e", shall have the same force and effect as if delivery
17 had been made to the protected person after attaining majority.

18 Sec. 27. Section 633.681, Code 2021, is amended to read as
19 follows:

20 **633.681 ~~Assets of minor ward exhausted~~ Exhausted or minimal**
21 **assets of minor protected person.**

22 1. When the assets of a minor ward's protected person's
23 conservatorship are exhausted or consist of personal property
24 only of an aggregate value not in excess of ~~twenty-five~~ fifty
25 thousand dollars, the court, upon application or upon its
26 own motion, may terminate the conservatorship. The order
27 for termination shall direct the conservator to deliver any
28 property remaining after the payment of allowed claims and
29 expenses of administration to a ~~eustodian under any uniform~~
30 ~~transfers to minors Act.~~ fiduciary acting under one or more of
31 the following accounts:

32 a. A uniform transfer to minor account established for the
33 minor pursuant to chapter 565B or the laws of any other state.

34 b. A uniform custodial trust account established for the
35 minor pursuant to chapter 633F or the laws of any other state.

1 c. A college savings plan account established for the minor
2 pursuant to Internal Revenue Code section 529 or chapter 12D
3 or the laws of any other state.

4 d. An ABLE account established for the minor with
5 disabilities pursuant to Internal Revenue Code section 529A or
6 chapter 12I or the laws of any other state.

7 2. Such delivery shall have the same force and effect as
8 if delivery had been made to the ward protected person after
9 attaining majority.

10

EXPLANATION

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

13 This bill establishes the Iowa uniform custodial trust Act
14 and provides definitions. The Iowa uniform custodial trust
15 Act is a statutory standby inter vivos trust for individuals
16 represented by attorneys engaged in general rather than
17 specialized probate practice.

18 The bill allows persons, competent to transfer property,
19 to create custodial trusts for the benefit of themselves
20 or others, with the beneficial interest in custodial trust
21 property in the beneficiary and not in the custodial trustee.
22 The bill allows any kind of property, real or personal,
23 tangible or intangible, to be made the subject of a transfer
24 to a custodial trustee for the benefit of a beneficiary. A
25 person may create a custodial trust by a written transfer of
26 the property to another person, evidenced by registration
27 or by other instrument of transfer executed and naming as
28 beneficiary an individual who may be the transferor, in
29 which the transferee is designated as custodial trustee, or a
30 person may create a custodial trust of property by a written
31 declaration, evidenced by registration of the property or by
32 other instrument of declaration executed and describing the
33 property and naming as beneficiary an individual other than the
34 declarant, in which the declarant as titleholder is designated,
35 in substance, as custodial trustee. The bill provides that a

1 registration or other declaration of trust for the sole benefit
2 of the declarant is not a valid custodial trust. Title is
3 given to the custodial trustee and the beneficial interest
4 is given to the beneficiary. A nonincapacitated beneficiary
5 or legal representative of an incapacitated beneficiary may
6 terminate a custodial trust by delivering the custodial trustee
7 a written notice declaring termination. A successor custodial
8 trustee may be designated in the trust document and any
9 person may augment the trust property by the addition of other
10 property.

11 The bill provides how the custodial trustee may make future
12 payment or transfer the position of custodial trustee. A
13 person who is able to designate the recipient of property
14 payable or transferable upon a future event may create a
15 custodial trust by designating in writing the recipient. A
16 designation of successor trustee may be made in a will, a
17 trust, a multiple-party account, an insurance policy, an
18 instrument exercising a power of appointment, or a writing
19 designating a beneficiary of contractual rights. The
20 designation can also be delivered or registered to the
21 fiduciary, payor, insurer, or obligor of the future right.

22 The bill provides a form and effect of receipt and acceptance
23 by custodial trustee. The form provides the name of the
24 custodial trustee, the name of the beneficiary, the property
25 the trust consists of, and date and signature of the custodial
26 trustee. It also provides that upon accepting custodial trust
27 property, the custodial trustee is subjected to personal
28 jurisdiction of the court with respect to any matter relating
29 to the custodial trust.

30 The bill provides that unless otherwise directed by an
31 instrument designating a custodial trustee, a person, who holds
32 property of or owes a debt to an incapacitated individual, may
33 make a transfer to a beneficiary's legal representative and
34 if none, to a member of the beneficiary's family, or a trust
35 company, as custodial trustee for the use and benefit of the

1 incapacitated individual. If the value of the property or the
2 debt exceeds \$50,000, the transfer is not effective unless
3 authorized by the court. A signed written acknowledgment of
4 delivery by a custodial trustee is a sufficient receipt and
5 discharge for property transferred to the custodial trustee.

6 The bill provides that a custodial trust cannot create
7 beneficial interests for multiple beneficiaries. The bill
8 provides that all custodial property held by the same custodial
9 trustee for a single beneficiary may be administered as a
10 single custodial trust.

11 The bill provides general duties of a custodial trustee
12 which include: registering or recording the instrument vesting
13 title to custodial trust property, if appropriate; following
14 the directions of the nonincapacitated beneficiary in the
15 management, control, investment, or retention of the custodial
16 trust property; observing the prudent investment standards set
17 forth in Code section 633.123 if there is not clear directives
18 from the beneficiary prior to being incapacitated; retaining
19 any custodial trust property received from the transferor; and
20 controlling, collecting, holding, managing, investing, and
21 reinvesting custodial trust property. The bill provides that
22 if a custodial trustee has a special skill or expertise or is
23 named custodial trustee on the basis of representation of a
24 special skill or expertise, the custodial trustee shall use
25 that skill or expertise in making decisions for the custodial
26 trust property. The bill provides that a custodial trustee
27 at all times shall keep custodial trust property of which the
28 custodial trustee has control separate from all other property
29 in a manner sufficient to identify it clearly as custodial
30 trust property of the beneficiary. The bill provides that a
31 custodial trustee shall keep records of all transactions with
32 respect to custodial trust property, including information
33 necessary for the preparation of tax returns, and shall make
34 the records and information available at reasonable times to
35 the beneficiary or legal representative of the beneficiary.

1 Furthermore, the exercise of a durable power of attorney for
2 an incapacitated beneficiary is not effective to terminate or
3 direct the administration or distribution of a custodial trust.

4 The bill provides that the custodial trustee has all the
5 rights and powers over custodial trust property which a
6 person has over individually owned property which may only be
7 exercised in a fiduciary capacity.

8 The bill provides how the custodial trust may be used. If
9 the beneficiary is not incapacitated, the custodial trustee
10 shall pay or expend for the beneficiary's use or benefit the
11 amount of the custodial trust property at the beneficiary's
12 directive. If the beneficiary is incapacitated, the custodial
13 trustee shall be allowed to distribute the amount of the
14 custodial trust property as deemed advisable for the use and
15 benefit of the beneficiary and individuals who are entitled
16 to support by the beneficiary. The custodial trustee has
17 discretion in determining the manner, when, and to the
18 extent that the expenditures are made without court order and
19 without regard to other support, income, or property of the
20 beneficiary.

21 The bill provides that a custodial trustee may determine
22 a beneficiary incapacitated relying upon previous direction
23 or authority given by the beneficiary while not incapacitated
24 including direction or authority pursuant to a durable power
25 of attorney; written documentation from the beneficiary's
26 physician; on the petition of the beneficiary, the custodial
27 trustee, or other interested person in the custodial trust
28 property, the court may determine whether the beneficiary is
29 incapacitated; or other persuasive evidence. The bill also
30 provides that if a custodial trustee deems that a beneficiary's
31 incapacity has ceased or that the circumstances concerning
32 the beneficiary's ability to manage the property and business
33 affairs have changed, the custodial trustee may administer
34 the trust as for a beneficiary who is not incapacitated. The
35 bill provides when a determination of incapacity has not been

1 made, a custodial trustee who has reason to believe that the
2 beneficiary is incapacitated shall administer the custodial
3 trust in accordance with provisions of the bill applicable
4 to an incapacitated beneficiary. A beneficiary being found
5 to be incapacitated does not terminate the custodial trust,
6 any designation of the successor custodial trustee, rights
7 or powers of the custodial trustee, or any immunities of a
8 third-person action on the instructions of the custodial
9 trustee.

10 The bill provides that a third party acting in good faith
11 has no need to determine the custodial trustee's authority to
12 bind the beneficiary with respect to property and investment
13 matters. The bill generally limits the claims of third
14 parties to recourse against the custodial property, with the
15 beneficiary insulated against personal liability unless the
16 beneficiary is personally at fault and the custodial trustee is
17 similarly insulated unless the custodial trustee is personally
18 at fault or failed to disclose the custodial capacity when
19 entering into a contract.

20 The bill provides for declination, resignation, incapacity,
21 death, or removal of the custodial trustee. A custodial
22 trustee may decline the appointment by notifying the person
23 who made the designation prior to accepting the custodial
24 trust property. If a substitute custodial trustee has not
25 been appointed, the person who made the initial designation
26 may designate a substitute custodial trustee who becomes
27 the custodial trustee. Otherwise, the transferor's legal
28 representative may designate a substitute custodial trustee.
29 A custodial trustee, who has accepted the custodial trust
30 property, may resign by delivering written notice to a
31 successor custodial trustee, the beneficiary, and, if the
32 beneficiary is incapacitated, to the beneficiary's legal
33 representative, and transferring, registering, or recording an
34 appropriate instrument relating to the custodial trust property
35 in the name of, and delivering the records to, the successor

1 custodial trustee.

2 The bill provides that if the custodial trustee or successor
3 custodial trustee dies, resigns, or becomes incapacitated,
4 the successor custodial trustee designated becomes the
5 custodial trustee. If the successor is not identified,
6 the competent beneficiary or the legal representative of an
7 incapacitated beneficiary may designate a successor custodial
8 trustee. If the beneficiary fails to act in 90 days, the
9 legal representative becomes the custodial trustee. If the
10 incapacitated beneficiary does not have a legal representative
11 or the legal representative fails to act, the resigning
12 custodial trustee may designate a successor custodial trustee.
13 The court may also be petitioned to designate a successor
14 custodial trustee if a successor custodial trustee is not
15 designated.

16 The bill provides that a substitute custodial trustee,
17 the beneficiary, the beneficiary's legal representative, and
18 if none, a member of the beneficiary's family, or a person
19 interested in the custodial trust property, may petition the
20 court to remove the custodial trustee for cause and designate
21 a successor custodial trustee, to require the custodial
22 trustee to furnish a bond or other security for the faithful
23 performance of fiduciary duties, or for other appropriate
24 relief.

25 The bill provides means of monitoring and enforcing the
26 custodial trust including provisions requiring the custodial
27 trustee to keep the beneficiary informed, requiring accounting
28 by the custodial trustee, providing protection for the
29 custodial trustee by the statutes of limitation on proceedings
30 against the custodial trustee, and relating to the distribution
31 of the assets on termination of the custodial trust.

32 The bill provides that upon termination of the custodial
33 trust, the custodial property shall be transferred to
34 the beneficiary, if not incapacitated or deceased; to
35 the beneficiary's legal representative or other recipient

1 designated by the court for an incapacitated beneficiary;
2 or upon the death of the beneficiaries as last directed in
3 a writing signed by the beneficiary while not incapacitated
4 and received by the custodial trustee prior to the death, as
5 designated in the instrument that created the custodial trust,
6 or to the estate of the deceased beneficiary.

7 The bill provides the appropriate methods and forms to be
8 used for creating a custodial trust. The bill provides that
9 a custodial trust created under the bill remains subject to
10 the bill despite a subsequent change in the residence of the
11 transferor, the beneficiary, or the custodial trustee or the
12 removal of the custodial trust property from the state of
13 original location.

14 The bill amends the Code section on termination and
15 modification of guardianship (Code section 232D.503) and
16 provides that if the court orders termination of a guardianship
17 and the guardian has custody of the assets, the court must
18 order delivery of the assets to the minor or fiduciary acting
19 under one of the following accounts: uniform transfer to minor
20 account established for the minor; a uniform custodial trust
21 account established for the minor; an educational savings plan
22 trust account; or an ABLE savings plan trust account.

23 The bill amends the amount of money that may be transferred
24 by a fiduciary and the small distribution from \$25,000 to
25 \$50,000. The bill provides that a person is entitled to
26 the small distributions to any of the following: a uniform
27 transfer to minor account established for the minor; a
28 uniform custodial trust account established for the minor; an
29 educational savings plan trust account; or an ABLE savings plan
30 trust account.

31 The bill amends the cause for termination in a
32 conservatorship by adding the following three conditions: the
33 value of the protected person's property is insufficient to
34 justify the cost of administration involved; that continued
35 administration of the conservatorship is not in the best

1 interest of the protected person; and that a reasonable
2 alternative exists under Code section 633.678 for managing the
3 protected person's assets by clear and convincing evidence.
4 Under current law, the court must only find that the basis for
5 appointment provided in Code section 633.553 or 633.554 is not
6 satisfied.

7 The bill amends the Code section regarding the delivery of
8 assets upon termination of a conservatorship by including that
9 the delivery shall be made to the following parties as ordered
10 by the court: to a custodian under a uniform transfers to a
11 minor account; to a custodial trustee; to an account owner or
12 participant under a educational savings plan trust account; or
13 an ABLE savings plan trust account owner. Current Code only
14 provides for the assets to the person or persons entitled to
15 them.

16 The bill provides that the order for termination shall
17 direct the conservator to deliver any property remaining after
18 the payment of allowed claims and expenses of administration
19 to the fiduciary acting under one or more of the following
20 accounts: a uniform transfer to minor account established for
21 the minor; a uniform custodial trust account established for
22 the minor; an educational savings plan trust account; or an
23 ABLE savings plan trust account. The bill also increases the
24 threshold at which a court may terminate a conservatorship for
25 having minimal assets of a minor protected person from \$25,000
26 to \$50,000.