Senate File 240 - Reprinted

SENATE FILE 240
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1016)

(COMPANION TO HF 295 BY
COMMITTEE ON JUDICIARY)

(As Amended and Passed by the Senate February 9, 2021)

A BILL FOR

An Act relating to the creation, administration, and termination of custodial trusts.

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.

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

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

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

b. Detailed or incarcerated in a penal system.

c. Outside the United States and unable to return.

d. A minor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Persons may be designated as substitute or successor

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

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

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

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

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

CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

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

Dated: _____

(Signature of Custodial Trustee)

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

matter relating to the custodial trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The custodial trust was created under section 633F.5.

b. The transferor has so directed in the instrument creating

the custodial trust.

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

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

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

b. Written documentation from the beneficiary's physician.

c. Other persuasive evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Any damages sustained by the trust.

b. The costs of the action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under section 633F.2, subsection 7, or section 633F.3 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary if not incapacitated, or the legal representative of an incapacitated beneficiary, may designate a successor custodial trustee. If the beneficiary is not incapacitated, but fails to act within ninety days after the ineligibility, resignation, death, or incapacity of the custodial trustee, or if the beneficiary is incapacitated and the beneficiary's legal representative fails to act within ninety days after the ineligibility, resignation, death, or incapacity of the custodial trustee, then the beneficiary's legal representative becomes successor custodial trustee. If the beneficiary does not have a legal representative or the legal representative fails to act, the resigning custodial trustee may designate a successor custodial trustee.

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

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

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

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

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

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

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

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

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

1. Upon the acceptance of custodial trust property, the

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

a. Once each year.

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

c. Upon resignation or removal of the custodial trustee.

d. Upon termination of the custodial trust.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The appointment of a legal representative.

(2) The removal of the incapacity.

(3) The death of the claimant.

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

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

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

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

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

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

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

(2) As designated in the instrument creating the custodial

trust.

(3) To the estate of the deceased beneficiary.

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

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

Signed _____ (signature of beneficiary).

Date _____

Receipt Acknowledged: _____(signature of Custodial Trustee)

Date _____

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

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

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

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

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

TRANSFER UNDER THE IOWA UNIFORM CUSTODIAL TRUST ACT

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

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

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

Dated:_____

Signature: _____

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

DECLARATION OF TRUST UNDER IOWA UNIFORM CUSTODIAL TRUST ACT

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

successor custodial trustee.

Dated: _____

Signature: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

Custodial Trust Act".

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

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

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

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

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

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

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

This chapter shall be known and may be cited as the "*Iowa Uniform Custodial Trust Act*".

DIVISION II

CONFORMING CHANGES

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

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

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

a. A conservatorship established for the minor.

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

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

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

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

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

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

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

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

633.108 Small distributions ~~to minors — payment~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

633.678 Delivery of assets.

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

a. To the person or persons entitled to them.

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

c. To a custodial trustee under a uniform custodial trust

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

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

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

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

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

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

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

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

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

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

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

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