

Kreiman, Ch.
Kettering
Grundberg

HSB 672

HOUSE FILE 2531

JUDICIARY

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON LARSON)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act making certain amendments to the Iowa trust code.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 633.1102, Code 2001, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 12A. "Qualified beneficiary" means a
4 beneficiary who, on the date the beneficiary's qualification
5 is determined, is any of the following:

6 a. Eligible to receive distributions of income or
7 principal from the trust.

8 b. Would receive property from the trust upon immediate
9 termination of the trust.

10 Sec. 2. Section 633.2102, Code 2001, is amended to read as
11 follows:

12 633.2102 REQUIREMENTS FOR VALIDITY.

13 1. A trust is created only if all of the following
14 elements are satisfied:

15 a. The settlor was competent and indicated an intention to
16 create a trust.

17 b. The same person is not the sole trustee and sole
18 beneficiary.

19 ~~c. Unless-the-trust-is-a-charitable-trust, an-honorary~~
20 ~~trust, or a trust for the care of an animal, the trust has a~~
21 ~~definite-beneficiary or a beneficiary who will be definitely~~
22 ~~ascertained within the period of the applicable rule against~~
23 ~~perpetuities. The trust has a definite beneficiary or a~~
24 beneficiary who will be definitely ascertained within the
25 period of the applicable rule against perpetuities, unless the
26 trust is a charitable trust, an honorary trust, or a trust for
27 pets.

28 2. A definite or definitely ascertainable beneficiary
29 includes a beneficiary or class of beneficiaries designated
30 under a power to select the beneficiaries granted by the terms
31 of the trust to the trustee or another person. If the power
32 is not exercised within a reasonable time, the power fails and
33 the property passes to the person or persons who would have
34 taken the property had the power not been conferred.

35 Sec. 3. Section 633.2201, subsection 3, Code 2001, is

1 amended by striking the subsection.

2 Sec. 4. Section 633.2205, subsection 2, Code 2001, is
3 amended to read as follows:

4 2. Upon termination of a trust under this section, the
5 trustee shall distribute the trust property in accordance with
6 the probable intention of the settlor under the circumstances.
7 Extrinsic evidence is admissible for the purpose of
8 ascertaining the probable intention of the settlor.

9 Sec. 5. Section 633.2206, subsection 1, Code 2001, is
10 amended by striking the subsection and inserting in lieu
11 thereof the following:

12 1. The court may reform the terms of the trust, even if
13 unambiguous, to conform to the settlor's intent if it is
14 proved by clear and convincing evidence that the settlor's
15 intent and the terms of the trust were affected by a mistake
16 of fact or law whether expressed or induced.

17 Sec. 6. Section 633.4105, subsection 2, paragraph b,
18 subparagraphs (1) and (2), Code 2001, are amended to read as
19 follows:

20 (1) By majority vote of all ~~adult~~ qualified beneficiaries,
21 who are adults, and the representative of any minor or
22 incompetent qualified beneficiary, as defined by section
23 633.6303.

24 (2) By a person appointed by the court on petition of an
25 interested person or of a person named as trustee by the terms
26 of the trust. The court, in selecting a trustee, shall
27 consider any nomination made by the adult beneficiaries and
28 representatives of any minor and incompetent beneficiaries.

29 Sec. 7. Section 633.4105, subsection 3, Code 2001, is
30 amended by striking the subsection.

31 Sec. 8. Section 633.4106, subsection 1, paragraph c, Code
32 2001, is amended to read as follows:

33 c. With the consent of the ~~adult~~ qualified beneficiaries
34 ~~as defined in section 633.4105, subsection 1, paragraph c,~~ who are adults
35 if the trust is irrevocable or the holder of the power to

1 revoke lacks competency or is not represented by a guardian,
2 conservator, or agent.

3 Sec. 9. Section 633.4111, subsection 2, paragraph a, Code
4 2001, is amended to read as follows:

5 a. Each qualified beneficiary ~~who is entitled to an~~
6 ~~accounting under section 633.4213, subsection 6.~~

7 Sec. 10. Section 633.4202, subsections 2, 3, and 5, Code
8 2001, are amended to read as follows:

9 2. Any transaction involving the trust which is affected
10 by a ~~substantial~~ material conflict between the trustee's
11 fiduciary and personal interests is voidable by a beneficiary
12 affected by the transaction unless one of the following
13 applies:

14 a. The transaction was expressly authorized by the terms
15 of the trust.

16 b. The beneficiary consented to or affirmed the
17 transaction or released the trustee from liability as provided
18 in section 633.4506.

19 c. The transaction is approved by the court after notice
20 to interested persons.

21 3. A transaction affected by a ~~substantial~~ material
22 conflict between personal and fiduciary interests includes any
23 sale, encumbrance, or other transaction involving the trust
24 property entered into by the trustee, the spouse, descendant,
25 agent, or attorney of a trustee, or corporation or other
26 enterprise in which the trustee has a substantial beneficial
27 interest.

28 5. This section does not apply to any of the following:

29 a. An agreement between a trustee and a beneficiary
30 relating to the appointment of the trustee.

31 b. The payment of compensation to the trustee, whether by
32 agreement, the terms of the trust, or this trust code.

33 c. A transaction between a trust and another trust,
34 decedent's or conservatorship estate of which the trustee is a
35 fiduciary if the transaction is fair to the beneficiaries of

1 the trust.

2 d. An investment by a trustee in securities of an
3 investment company or investment trust to which the trustee,
4 or its affiliate, provides services in a capacity other than
5 as trustee if the investment complies with the prudent
6 investor rule. The trustee may be compensated by the
7 investment company or investment trust for providing services
8 from fees charged to the trust if the trustee provides annual
9 notice and a copy of the trustee's annual report, including
10 the rate and method by which the trustee's compensation was
11 determined, to the persons specified in section 633.4213.

12 e. A deposit of trust money in a regulated financial
13 service institution operated by the trustee.

14 Sec. 11. Section 633.4211, Code 2001, is amended to read
15 as follows:

16 633.4211 ENFORCEMENT AND DEFENSE OF CLAIMS AND ACTIONS.

17 A trustee shall take reasonable steps to enforce claims
18 ~~that are part of the trust property~~ of the trust, to defend
19 claims against the trust, and to defend against actions that
20 may result in a loss to the trust.

21 Sec. 12. Section 633.4213, Code Supplement 2001, is
22 amended by striking the section and inserting in lieu thereof
23 the following:

24 633.4213 DUTY TO INFORM AND ACCOUNT.

25 A trustee shall keep the qualified beneficiaries of the
26 trust reasonably informed about the administration of the
27 trust and the material facts necessary to protect the
28 beneficiaries' interests.

29 1. The trustee shall inform each qualified beneficiary of
30 their right to receive an annual accounting and a copy of the
31 trust instrument. The trustee shall also inform each
32 qualified beneficiary about the process necessary to obtain an
33 annual accounting or a copy of the trust instrument, if not
34 provided. The trustee shall further inform the beneficiary
35 whether the beneficiary will, or will not, receive an annual

1 accounting if the beneficiary fails to take any action. If a
2 beneficiary has previously been provided the notice required
3 by this section, additional notice shall not be required due
4 to a change of trustees or a change in the composition of the
5 qualified beneficiaries.

6 2. The trustee shall provide the notice required in
7 subsection 1 to each qualified beneficiary within a reasonable
8 time following any of the following events:

9 a. The commencement of the trust administration.

10 b. The trustee becoming aware that there is a new
11 qualified beneficiary or a representative of any minor or
12 incompetent beneficiary.

13 c. The trust becoming irrevocable.

14 d. The time that no person, except the trustee, has the
15 right to change the beneficiaries of the trust.

16 3. A trustee of an irrevocable trust shall provide
17 annually to each adult beneficiary and the representative of
18 any minor or incompetent beneficiary who may receive a
19 distribution of income or principal during the accounting time
20 period, an accounting, unless an accounting has been waived
21 specifically for a particular accounting time period.

22 4. This section does not apply to any trust where the
23 grantor has retained the right, or has transferred the right,
24 to change the beneficiaries of the trust.

25 5. The only consequence to a trustee's failure to provide
26 a required accounting or notice is that the trustee shall not
27 be able to rely upon the statute of limitations under section
28 633.4504. If the trustee has refused, after a reasonable
29 request, to provide an accounting to a qualified beneficiary,
30 the court may assess costs, including attorney fees, against
31 the trustee personally.

32 6. The format and content of an accounting required by
33 this section shall be within the discretion of the trustee, if
34 sufficient to reasonably inform the beneficiary of the
35 condition and activities of the trust during the accounting

1 period.

2 7. This section applies to any trust created on or after
3 July 1, 2002, unless the trustor has specifically waived the
4 requirements of this section in the trust instrument. Waiver
5 of this section shall not bar any beneficiary's common-law
6 right to an accounting, and shall not provide any immunity to
7 a trustee, acting under the terms of the trust, for liability
8 to any beneficiary who discovers facts giving rise to a cause
9 of action against the trustee.

10 Sec. 13. Section 633.4214, Code 2001, is amended by adding
11 the following new subsections:

12 NEW SUBSECTION. 3. Subject to paragraph "c" and unless
13 the terms of the trust expressly indicate that a rule in this
14 subsection does not apply, all of the following shall apply:

15 a. A person other than a settlor who is a beneficiary and
16 trustee of a trust that confers on the trustee the power to
17 make discretionary distributions to or for the trustee's
18 personal benefit may exercise the power only in accordance
19 with an ascertainable standard relating to the trustee's
20 individual health, education, support, or maintenance within
21 the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the
22 Internal Revenue Code of 1986.

23 b. A trustee shall not exercise a power to make
24 discretionary distributions to satisfy a legal obligation of
25 support that the trustee personally owes to another person.

26 c. This subsection does not apply to the following:

27 (1) A power held by the settlor's spouse who is the
28 trustee of a trust for which a marital deduction, as defined
29 in section 2056(b)(5) or 2523(e) of the Internal Revenue Code
30 of 1986, that was previously allowed.

31 (2) A trust that may be revoked or amended by the settlor.

32 (3) A trust, if contributions to the trust which qualify
33 for an annual exclusion under section 2503(c) of the Internal
34 Revenue Code of 1986.

35 NEW SUBSECTION. 4. A power whose exercise is limited or

1 prohibited by subsection 3 may be exercised by a majority of
2 the remaining trustees whose exercise of the power is not so
3 limited or prohibited. If the power of all trustees is so
4 limited or prohibited, the court may appoint a special
5 fiduciary with authority to exercise the power.

6 Sec. 14. Section 633.4402, subsections 3, 6, 16, 25, and
7 27, Code 2001, are amended to read as follows:

8 ~~3. Continue-or-participate-in-the-operation-of-a-business~~
9 ~~or-other-enterprise-that-is-part-of-the-trust-property-and~~
10 ~~affect-an-incorporation,-dissolution,-or-other-change-in-the~~
11 ~~form-of-the-organization-of-the-business-or-enterprise. With~~
12 respect to an interest in a proprietorship, partnership,
13 limited liability company, business trust, corporation, or
14 other form of business or enterprise, continue or participate
15 in the operation of a business or other enterprise that is
16 part of the trust and take any action that may be taken by
17 shareholders, members, or property owners, including merging,
18 dissolving, or otherwise changing the form of a business
19 organization and contributing additional capital.

20 6. Manage, control, divide, develop, improve, exchange,
21 partition, change the character of, or abandon trust property.
22 Consent, directly or through a committee or other agent, to
23 the reorganization, consolidation, merger, dissolution, or
24 liquidation of a corporation or other business enterprise, and
25 participate in voting trusts, pooling arrangements, and
26 foreclosures, and in connection therewith, deposit securities
27 with and transfer title and delegate discretion to any
28 protective or other committee as the trustee considers
29 advisable.

30 ~~16. Consent,-directly-or-through-a-committee-or-other~~
31 ~~agent,-to-the-reorganization,-consolidation,-merger,-~~
32 ~~dissolution,-or-liquidation-of-a-corporation-or-other-business~~
33 ~~enterprise,-and-participate-in-voting-trusts,-pooling~~
34 ~~arrangements,-and-foreclosures,-and-in-connection-therewith,-~~
35 ~~deposit-securities-with-and-transfer-title-and-delegate~~

1 discretion-to-any-protective-or-other-committee-as-the-trustee
 2 considers-advisable: Select a mode of payment under any
 3 employee benefit or retirement plan, annuity, or life
 4 insurance payable to the trustee, and exercise rights
 5 thereunder, including the right to indemnification for
 6 expenses and against liabilities, and take appropriate action
 7 to collect proceeds.

8 25. Make-a-distribution-of-property-and-money-in-divided
 9 or-undivided-interests,-pro-rata-or-non-pro-rata,-and-adjust
 10 resulting-differences-in-valuation: Upon distribution of
 11 trust property or the division or termination of a trust, make
 12 distribution in divided or undivided interests, allocate
 13 particular assets in proportionate or disproportionate shares,
 14 value the trust property for those purposes, and adjust for
 15 resulting differences in valuation.

16 27. Expend-trust-funds-to-inspect-or-investigate-property
 17 that-the-trustee-has-been-asked-to-hold,-or-property-owned-or
 18 operated-by-an-entity-in-which-the-trustee-holds-or-has-been
 19 asked-to-hold-an-interest-for-the-purpose-of-determining-the
 20 application-of-environmental-law-with-respect-to-the-property,
 21 and-take-action-to-prevent,-abate,-or-otherwise-remedy-any
 22 actual-or-potential-violation-of-any-environmental-law
 23 affecting-property-held-directly-or-indirectly-by-the-trustee.
 24 With respect to any actual or potential violation of any
 25 environmental law affecting property held directly or
 26 indirectly by the trustee, a trustee shall do all of the
 27 following:

28 a. Inspect or investigate property the trustee holds or
 29 has been asked to hold or property owned or operated by an
 30 organization in which the trustee holds an interest in or has
 31 been asked to hold an interest in, and expend trust funds
 32 therefore, for the purpose of determining any potential
 33 environmental law violations with respect to the property.

34 b. Take action to prevent, abate, or otherwise remedy any
 35 actual or potential violation of any environmental law

1 affecting property held directly or indirectly by the trustee,
2 whether taken before or after the assertion of a claim or the
3 initiation of governmental enforcement.

4 c. Decline to accept property into trust or disclaim any
5 power with respect to property that is or may be burdened with
6 liability for violation of any environmental law.

7 d. Negotiate claims against the trust which may be
8 asserted for an alleged violation of environmental law.

9 e. Pay the expense of any inspection, review, abatement,
10 or remedial action to comply with environmental law.

11 Sec. 15. Section 633.4402, Code 2001, is amended by adding
12 the following new subsections:

13 NEW SUBSECTION. 31. Resolve a dispute concerning the
14 interpretation of the trust or its administration by
15 mediation, arbitration, or other procedure for alternative
16 dispute resolution.

17 NEW SUBSECTION. 32. Upon termination of the trust,
18 exercise the powers necessary to conclude the administration
19 of the trust and distribute the trust property to the person
20 or persons entitled to the trust property.

21 Sec. 16. Section 633.4502, Code 2001, is amended by adding
22 the following new subsection:

23 NEW SUBSECTION. 8. Order any other appropriate relief.

24 Sec. 17. Section 633.4506, subsection 2, Code 2001, is
25 amended to read as follows:

26 ~~2. Notwithstanding the provisions of subsection 1, a~~ A
27 ~~beneficiary may hold a trustee liable for breach of trust~~
28 ~~under either of the following circumstances~~ despite a consent,
29 release, or affirmance by the beneficiary, if, at the time of
30 the consent, release, or affirmance, all of the following
31 applied:

32 ~~a. The beneficiary at the time of the consent, release, or~~
33 ~~affirmance did not know of the beneficiary's rights and of the~~
34 ~~material facts the trustee knew or should have known and the~~
35 ~~trustee did not reasonably believe that the beneficiary knew~~

1 did not know of the beneficiary's rights.

2 b. ~~The consent, release, or affirmance of the beneficiary~~
3 ~~was induced by improper conduct of the trustee~~ beneficiary did
4 not know the material facts known to the trustee or which the
5 trustee should have known.

6 c. The trustee did not reasonably believe that the
7 beneficiary knew the beneficiary's rights or that the
8 beneficiary knew material facts known to the trustee or which
9 the trustee should have known.

10 Sec. 18. Section 633.4506, Code 2001, is amended by adding
11 the following new subsection:

12 NEW SUBSECTION. 3. A beneficiary may hold a trustee
13 liable for breach of a trust, despite a consent, release, or
14 affirmance by the beneficiary, if the consent, release, or
15 affirmance was induced by improper conduct of the trustee.

16 Sec. 19. Section 633.4601, subsection 2, Code 2001, is
17 amended to read as follows:

18 2. A trustee is personally liable for obligations arising
19 from ownership or control of trust property ~~or,~~ including
20 liability for environmental law violations, and for torts
21 committed in the course of administering a trust only if the
22 trustee is personally at fault.

23 Sec. 20. Section 633.6101, Code 2001, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 633.6101 SUBJECT MATTER JURISDICTION.

27 The district ~~court~~ has exclusive jurisdiction of
28 proceedings concerning the internal affairs of a trust and of
29 actions and proceedings to determine the existence of a trust,
30 actions and proceedings by or against creditors or debtors of
31 a trust, and other actions and proceedings involving a trust
32 and third persons.

33 Sec. 21. Section 633.6105, Code 2001, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 633.6105 TRANSFER OF JURISDICTION.

2 1. The court may transfer the place of administration of a
3 trust to or from this state or transfer some or all of the
4 trust property to a trustee in or outside this state if it
5 finds that the transfer of the trust property to a trustee in
6 this or another jurisdiction, or the transfer of the place of
7 administration of a trust to this or another jurisdiction,
8 will promote the best interests of the trust and those
9 interested in it, taking into account the economical and
10 convenient administration of the trust and the views of the
11 qualified beneficiaries.

12 2. A new trustee to whom the trust property is to be
13 transferred shall be qualified, willing, and able to
14 administer the trust or trust property under the terms of the
15 trust.

16 3. If the trust or any portion of the trust property is
17 transferred to another jurisdiction and if approval of the
18 transfer by the other court is required under the law of the
19 other jurisdiction, the proper court in the other jurisdiction
20 must have approved the transfer in order for the transfer to
21 be effective.

22 4. If a transfer is ordered, the court may direct the
23 manner of transfer and impose terms and conditions as may be
24 just, including a requirement for the substitution of a
25 successor trustee in any pending litigation in this state. A
26 delivery of property in accordance with the order of the court
27 is a full discharge of the trustee with respect to all
28 property specified in the order.

29 5. If the court grants a petition to transfer a trust or
30 trust property to this state, the court shall require the
31 trustee to give a bond, if necessary under the law of the
32 other jurisdiction or of this state, and may require bond as
33 provided in section 633.4102.

34 Sec. 22. Section 633.6301, Code 2001, is amended by adding
35 the following new subsections:

1 NEW SUBSECTION. 4. Notice to a person who may represent
2 and bind another person under this chapter has the same effect
3 as if notice were given directly to the person represented.

4 NEW SUBSECTION. 5. The consent of a person who may
5 represent and bind another person under this chapter is
6 binding on the person represented unless the person
7 represented objects to the representation before the consent
8 would otherwise have become effective.

9 Sec. 23. NEW SECTION. 633.7101 DIVISION PREVAILS.

10 Notwithstanding any Code provision to the contrary, the
11 provisions of this Division XX shall prevail over any other
12 applicable Code provision.

13 EXPLANATION

14 This bill provides for a number of amendments to the Iowa
15 trust code.

16 The bill defines "qualified beneficiary" to mean any
17 beneficiary who, on the date the beneficiary's qualification
18 is determined, is eligible to receive income or principal, or
19 would receive property from the trustee upon immediate
20 termination of the trust. The bill makes numerous
21 modifications to the use of the term throughout the trust
22 code.

23 The bill provides that the power to select beneficiaries
24 under the trust must be exercised within a reasonable time, or
25 the power fails and the property passes to the person or
26 persons who would have taken the property had the power not
27 been conferred.

28 The bill provides that the court may reform the terms of
29 the trust, even if unambiguous, to conform to the settlor's
30 intent if it is proved by clear and convincing evidence that
31 the settlor's intent and the terms of the trust were affected
32 by a mistake of fact or law whether expressed or induced.

33 The bill provides that extrinsic evidence may be considered
34 in determining to whom to distribute the trust property when a
35 trust with insufficient value to justify continued

1 administration is terminated.

2 The bill substitutes the term "material" for the term
3 "substantial" when referring to conflicts between the
4 trustee's fiduciary and personal interests. The bill allows
5 the trustee in a capacity other than as trustee to invest in
6 mutual and proprietary funds even where the trustee provides
7 services to the fund. The investment must comply with the
8 prudent investor rule. If the trust pays a fee for these
9 services, the trustee must provide notification pursuant to
10 Code section 633.4213. The trustee is also permitted to
11 establish trust funds in the trustee's own banking department.

12 The bill also provides that the trustee shall keep the
13 qualified beneficiaries of the trust reasonably informed about
14 the administration of the trust and the material facts
15 necessary for the qualified beneficiaries to protect their
16 interests, including an annual accounting and a copy of the
17 trust instrument.

18 The bill provides certain provisions regarding the terms of
19 a trust relating to estate and gift tax consequences.

20 The bill provides additional trust powers to a trustee,
21 including certain actions necessary to accomplish the proper
22 management, investment, and distribution of the trust property
23 including trustee power to make certain discretionary
24 distributions, trustee participation in the operation of a
25 business or other enterprise that is part of the trust
26 property, trustee participation in an employee benefit or
27 retirement plan, annuity, or life insurance, trustee
28 participation in the distribution or division of trust
29 property, trustee participation in any potential environmental
30 law violations in regard to any trust property, trustee
31 participation in dispute resolution concerning the
32 interpretation of the trust, and trustee participation in
33 administering the trust upon termination.

34 The bill provides that a beneficiary may hold a trustee
35 liable for breach of trust, despite a consent, release, or

1 affirmance by the beneficiary, if at the time of such consent,
 2 release or affirmance, the beneficiary did not know the
 3 beneficiary's rights, the beneficiary did not know the
 4 material facts known to the trustee or which the trustee
 5 should have known, and the trustee did not reasonably believe
 6 the beneficiary knew either of the above. The bill further
 7 provides a beneficiary may hold a trustee liable for a breach
 8 of trust if the beneficiary's consent, release, or affirmance
 9 was induced by improper conduct on the part of the trustee.

10 The bill provides that a trustee is personally liable for
 11 environmental law violations for torts committed in the course
 12 of administering a trust only if the trustee is personally at
 13 fault.

14 The bill provides that the district court has exclusive
 15 jurisdiction over proceedings concerning the internal affairs
 16 of a trust and of actions and proceedings to determine the
 17 existence of a trust, actions and proceedings by or against
 18 creditors or debtors of a trust, and other actions and
 19 proceedings involving a trust and third persons.

20 The bill provides that notice to a representative is
 21 considered to be binding on the person represented unless the
 22 person represented objects to the representation before the
 23 consent would otherwise have become effective.

24 The bill provides that, notwithstanding any Code provision
 25 to the contrary, the provisions of this division XX shall
 26 prevail over any other applicable Code provision.

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3/6/02 Judiciary
3/13/02 Do Pass

FEB 26 2002
Place On Calendar

HOUSE FILE 2531
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 672)

Passed House, Date ^(P. 633) 3/6/02 Passed Senate, Date ^(P. 874) 4-1-02
Vote: Ayes 93 Nays 0 Vote: Ayes 47 Nays 0
Approved April 11, 2002

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

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HF 2531

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5 is determined, is any of the following:

6 a. Eligible to receive distributions of income or
7 principal from the trust.

8 b. Would receive property from the trust upon immediate
9 termination of the trust.

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11 follows:

12 633.2102 REQUIREMENTS FOR VALIDITY.

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14 elements are satisfied:

15 a. The settlor was competent and indicated an intention to
16 create a trust.

17 b. The same person is not the sole trustee and sole
18 beneficiary.

19 ~~c. Unless-the-trust-is-a-charitable-trust,-an-honorary~~
20 ~~trust,-or-a-trust-for-the-care-of-an-animal,-the-trust-has-a~~
21 ~~definite-beneficiary-or-a-beneficiary-who-will-be-definitely~~
22 ~~ascertained-within-the-period-of-the-applicable-rule-against~~
23 ~~perpetuities.~~ The trust has a definite beneficiary or a
24 beneficiary who will be definitely ascertained within the
25 period of the applicable rule against perpetuities, unless the
26 trust is a charitable trust, an honorary trust, or a trust for
27 pets.

28 2. A definite or definitely ascertainable beneficiary
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30 under a power to select the beneficiaries granted by the terms
31 of the trust to the trustee or another person. If the power
32 is not exercised within a reasonable time, the power fails and
33 the property passes to the person or persons who would have
34 taken the property had the power not been conferred.

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6 the probable intention of the settlor under the circumstances.
7 Extrinsic evidence is admissible for the purpose of
8 ascertaining the probable intention of the settlor.

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11 thereof the following:

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13 unambiguous, to conform to the settlor's intent if it is
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16 of fact or law whether expressed or induced.

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18 subparagraphs (1) and (2), Code 2001, are amended to read as
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20 (1) By majority vote of all adult qualified beneficiaries,
21 who are adults, and the representative of any minor or
22 incompetent qualified beneficiary, as defined by section
23 633.6303.

24 (2) By a person appointed by the court on petition of an
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1 revoke lacks competency or is not represented by a guardian,
2 conservator, or agent.

3 Sec. 9. Section 633.4111, subsection 2, paragraph a, Code
4 2001, is amended to read as follows:

5 a. Each qualified beneficiary ~~who-is-entitled-to-an~~
6 ~~accounting-under-section-633-42137-subsection-6.~~

7 Sec. 10. Section 633.4202, subsections 2, 3, and 5, Code
8 2001, are amended to read as follows:

9 2. Any transaction involving the trust which is affected
10 by a ~~substantial~~ material conflict between the trustee's
11 fiduciary and personal interests is voidable by a beneficiary
12 affected by the transaction unless one of the following
13 applies:

14 a. The transaction was expressly authorized by the terms
15 of the trust.

16 b. The beneficiary consented to or affirmed the
17 transaction or released the trustee from liability as provided
18 in section 633.4506.

19 c. The transaction is approved by the court after notice
20 to interested persons.

21 3. A transaction affected by a ~~substantial~~ material
22 conflict between personal and fiduciary interests includes any
23 sale, encumbrance, or other transaction involving the trust
24 property entered into by the trustee, the spouse, descendant,
25 agent, or attorney of a trustee, or corporation or other
26 enterprise in which the trustee has a substantial beneficial
27 interest.

28 5. This section does not apply to any of the following:

29 a. An agreement between a trustee and a beneficiary
30 relating to the appointment of the trustee.

31 b. The payment of compensation to the trustee, whether by
32 agreement, the terms of the trust, or this trust code.

33 c. A transaction between a trust and another trust,
34 decedent's or conservatorship estate of which the trustee is a
35 fiduciary if the transaction is fair to the beneficiaries of

1 the trust.

2 d. An investment by a trustee in securities of an
3 investment company or investment trust to which the trustee,
4 or its affiliate, provides services in a capacity other than
5 as trustee if the investment complies with the prudent
6 investor rule. The trustee may be compensated by the
7 investment company or investment trust for providing services
8 from fees charged to the trust if the trustee provides annual
9 notice and a copy of the trustee's annual report, including
10 the rate and method by which the trustee's compensation was
11 determined, to the persons specified in section 633.4213.

12 e. A deposit of trust money in a regulated financial
13 service institution operated by the trustee.

14 Sec. 11. Section 633.4211, Code 2001, is amended to read
15 as follows:

16 633.4211 ENFORCEMENT AND DEFENSE OF CLAIMS AND ACTIONS.

17 A trustee shall take reasonable steps to enforce claims
18 ~~that are part of the trust property~~ of the trust, to defend
19 claims against the trust, and to defend against actions that
20 may result in a loss to the trust.

21 Sec. 12. Section 633.4213, Code Supplement 2001, is
22 amended by striking the section and inserting in lieu thereof
23 the following:

24 633.4213 DUTY TO INFORM AND ACCOUNT.

25 A trustee shall keep the qualified beneficiaries of the
26 trust reasonably informed about the administration of the
27 trust and the material facts necessary to protect the
28 beneficiaries' interests.

29 1. The trustee shall inform each qualified beneficiary of
30 their right to receive an annual accounting and a copy of the
31 trust instrument. The trustee shall also inform each
32 qualified beneficiary about the process necessary to obtain an
33 annual accounting or a copy of the trust instrument, if not
provided. The trustee shall further inform the beneficiary
whether the beneficiary will, or will not, receive an annual

1 accounting if the beneficiary fails to take any action. If a
2 beneficiary has previously been provided the notice required
3 by this section, additional notice shall not be required due
4 to a change of trustees or a change in the composition of the
5 qualified beneficiaries.

6 2. The trustee shall provide the notice required in
7 subsection 1 to each qualified beneficiary within a reasonable
8 time following any of the following events:

9 a. The commencement of the trust administration.

10 b. The trustee becoming aware that there is a new
11 qualified beneficiary or a representative of any minor or
12 incompetent beneficiary.

13 c. The trust becoming irrevocable.

14 d. The time that no person, except the trustee, has the
15 right to change the beneficiaries of the trust.

16 3. A trustee of an irrevocable trust shall provide
17 annually to each adult beneficiary and the representative of
18 any minor or incompetent beneficiary who may receive a
19 distribution of income or principal during the accounting time
20 period, an accounting, unless an accounting has been waived
21 specifically for a particular accounting time period.

22 4. This section does not apply to any trust where the
23 grantor has retained the right, or has transferred the right,
24 to change the beneficiaries of the trust.

25 5. The only consequence to a trustee's failure to provide
26 a required accounting or notice is that the trustee shall not
27 be able to rely upon the statute of limitations under section
28 633.4504. If the trustee has refused, after a reasonable
29 request, to provide an accounting to a qualified beneficiary,
30 the court may assess costs, including attorney fees, against
31 the trustee personally.

32 6. The format and content of an accounting required by
33 this section shall be within the discretion of the trustee, if
34 sufficient to reasonably inform the beneficiary of the
35 condition and activities of the trust during the accounting

1 period.

2 7. This section applies to any trust created on or after
3 July 1, 2002, unless the trustor has specifically waived the
4 requirements of this section in the trust instrument. Waiver
5 of this section shall not bar any beneficiary's common-law
6 right to an accounting, and shall not provide any immunity to
7 a trustee, acting under the terms of the trust, for liability
8 to any beneficiary who discovers facts giving rise to a cause
9 of action against the trustee.

10 Sec. 13. Section 633.4214, Code 2001, is amended by adding
11 the following new subsections:

12 NEW SUBSECTION. 3. Subject to paragraph "c" and unless
13 the terms of the trust expressly indicate that a rule in this
14 subsection does not apply, all of the following shall apply:

15 a. A person other than a settlor who is a beneficiary and
16 trustee of a trust that confers on the trustee the power to
17 make discretionary distributions to or for the trustee's
18 personal benefit may exercise the power only in accordance
19 with an ascertainable standard relating to the trustee's
20 individual health, education, support, or maintenance within
21 the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the
22 Internal Revenue Code of 1986.

23 b. A trustee shall not exercise a power to make
24 discretionary distributions to satisfy a legal obligation of
25 support that the trustee personally owes to another person.

26 c. This subsection does not apply to the following:

27 (1) A power held by the settlor's spouse who is the
28 trustee of a trust for which a marital deduction, as defined
29 in section 2056(b)(5) or 2523(e) of the Internal Revenue Code
30 of 1986, that was previously allowed.

31 (2) A trust that may be revoked or amended by the settlor.

32 (3) A trust, if contributions to the trust which qualify
33 for an annual exclusion under section 2503(c) of the Internal
Revenue Code of 1986.

NEW SUBSECTION. 4. A power whose exercise is limited or

1 prohibited by subsection 3 may be exercised by a majority of
2 the remaining trustees whose exercise of the power is not so
3 limited or prohibited. If the power of all trustees is so
4 limited or prohibited, the court may appoint a special
5 fiduciary with authority to exercise the power.

6 Sec. 14. Section 633.4402, subsections 3, 6, 16, 25, and
7 27, Code 2001, are amended to read as follows:

8 ~~3. Continue or participate in the operation of a business~~
9 ~~or other enterprise that is part of the trust property and~~
10 ~~affect an incorporation, dissolution, or other change in the~~
11 ~~form of the organization of the business or enterprise. With~~
12 ~~respect to an interest in a proprietorship, partnership,~~
13 ~~limited liability company, business trust, corporation, or~~
14 ~~other form of business or enterprise, continue or participate~~
15 ~~in the operation of a business or other enterprise that is~~
16 ~~part of the trust and take any action that may be taken by~~
17 ~~shareholders, members, or property owners, including merging,~~
18 ~~dissolving, or otherwise changing the form of a business~~
19 ~~organization and contributing additional capital.~~

20 6. Manage, control, divide, develop, improve, exchange,
21 partition, change the character of, or abandon trust property.
22 Consent, directly or through a committee or other agent, to
23 the reorganization, consolidation, merger, dissolution, or
24 liquidation of a corporation or other business enterprise, and
25 participate in voting trusts, pooling arrangements, and
26 foreclosures, and in connection therewith, deposit securities
27 with and transfer title and delegate discretion to any
28 protective or other committee as the trustee considers
29 advisable.

30 16. ~~Consent, directly or through a committee or other~~
31 ~~agent, to the reorganization, consolidation, merger,~~
32 ~~dissolution, or liquidation of a corporation or other business~~
33 ~~enterprise, and participate in voting trusts, pooling~~
34 ~~arrangements, and foreclosures, and in connection therewith,~~
35 ~~deposit securities with and transfer title and delegate~~

1 discretion-to-any-protective-or-other-committee-as-the-trustee
2 considers-advisable: Select a mode of payment under any
3 employee benefit or retirement plan, annuity, or life
4 insurance payable to the trustee, and exercise rights
5 thereunder, including the right to indemnification for
6 expenses and against liabilities, and take appropriate action
7 to collect proceeds.

8 25. Make-a-distribution-of-property-and-money-in-divided
9 or-undivided-interests, pro-rata-or-non-pro-rata, and adjust
10 resulting-differences-in-valuation: Upon distribution of
11 trust property or the division or termination of a trust, make
12 distribution in divided or undivided interests, allocate
13 particular assets in proportionate or disproportionate shares,
14 value the trust property for those purposes, and adjust for
15 resulting differences in valuation.

16 27. Expend-trust-funds-to-inspect-or-investigate-property
17 that-the-trustee-has-been-asked-to-hold, or-property-owned-or
18 operated-by-an-entity-in-which-the-trustee-holds-or-has-been
19 asked-to-hold-an-interest-for-the-purpose-of-determining-the
20 application-of-environmental-law-with-respect-to-the-property,
21 and-take-action-to-prevent, abate, or-otherwise-remedy-any
22 actual-or-potential-violation-of-any-environmental-law
23 affecting-property-held-directly-or-indirectly-by-the-trustee.
24 With respect to any actual or potential violation of any
25 environmental law affecting property held directly or
26 indirectly by the trustee, a trustee shall do all of the
27 following:

28 a. Inspect or investigate property the trustee holds or
29 has been asked to hold or property owned or operated by an
30 organization in which the trustee holds an interest in or has
31 been asked to hold an interest in, and expend trust funds
32 therefore, for the purpose of determining any potential
33 environmental law violations with respect to the property.

b. Take action to prevent, abate, or otherwise remedy any
actual or potential violation of any environmental law

1 affecting property held directly or indirectly by the trustee,
2 whether taken before or after the assertion of a claim or the
3 initiation of governmental enforcement.

4 c. Decline to accept property into trust or disclaim any
5 power with respect to property that is or may be burdened with
6 liability for violation of any environmental law.

7 d. Negotiate claims against the trust which may be
8 asserted for an alleged violation of environmental law.

9 e. Pay the expense of any inspection, review, abatement,
10 or remedial action to comply with environmental law.

11 Sec. 15. Section 633.4402, Code 2001, is amended by adding
12 the following new subsections:

13 NEW SUBSECTION. 31. Resolve a dispute concerning the
14 interpretation of the trust or its administration by
15 mediation, arbitration, or other procedure for alternative
16 dispute resolution.

17 NEW SUBSECTION. 32. Upon termination of the trust,
18 exercise the powers necessary to conclude the administration
19 of the trust and distribute the trust property to the person
20 or persons entitled to the trust property.

21 Sec. 16. Section 633.4502, Code 2001, is amended by adding
22 the following new subsection:

23 NEW SUBSECTION. 8. Order any other appropriate relief.

24 Sec. 17. Section 633.4506, subsection 2, Code 2001, is
25 amended to read as follows:

26 ~~2. Notwithstanding the provisions of subsection 17-a A~~
27 ~~beneficiary may hold a trustee liable for breach of trust~~
28 ~~under either of the following circumstances despite a consent,~~
29 ~~release, or affirmance by the beneficiary, if, at the time of~~
30 ~~the consent, release, or affirmance, all of the following~~
31 ~~applied:~~

32 ~~a. The beneficiary at the time of the consent, release, or~~
33 ~~affirmance did not know of the beneficiary's rights and of the~~
34 ~~material facts the trustee knew or should have known and the~~
35 ~~trustee did not reasonably believe that the beneficiary knew~~

1 did not know of the beneficiary's rights.

2 b. ~~The consent, release or affirmance of the beneficiary~~
3 ~~was induced by improper conduct of the trustee~~ beneficiary did
4 not know the material facts known to the trustee or which the
5 trustee should have known.

6 c. The trustee did not reasonably believe that the
7 beneficiary knew the beneficiary's rights or that the
8 beneficiary knew material facts known to the trustee or which
9 the trustee should have known.

10 Sec. 18. Section 633.4506, Code 2001, is amended by adding
11 the following new subsection:

12 NEW SUBSECTION. 3. A beneficiary may hold a trustee
13 liable for breach of a trust, despite a consent, release, or
14 affirmance by the beneficiary, if the consent, release, or
15 affirmance was induced by improper conduct of the trustee.

16 Sec. 19. Section 633.4601, subsection 2, Code 2001, is
amended to read as follows:

17 2. A trustee is personally liable for obligations arising
19 from ownership or control of trust property ~~or, including~~
20 liability for environmental law violations, and for torts
21 committed in the course of administering a trust only if the
22 trustee is personally at fault.

23 Sec. 20. Section 633.6101, Code 2001, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 633.6101 SUBJECT MATTER JURISDICTION.

27 The district court has exclusive jurisdiction of
28 proceedings concerning the internal affairs of a trust and of
29 actions and proceedings to determine the existence of a trust,
30 actions and proceedings by or against creditors or debtors of
31 a trust, and other actions and proceedings involving a trust
32 and third persons.

33 Sec. 21. Section 633.6105, Code 2001, is amended by
striking the section and inserting in lieu thereof the
following:

1 633.6105 TRANSFER OF JURISDICTION.

2 1. The court may transfer the place of administration of a
3 trust to or from this state or transfer some or all of the
4 trust property to a trustee in or outside this state if it
5 finds that the transfer of the trust property to a trustee in
6 this or another jurisdiction, or the transfer of the place of
7 administration of a trust to this or another jurisdiction,
8 will promote the best interests of the trust and those
9 interested in it, taking into account the economical and
10 convenient administration of the trust and the views of the
11 qualified beneficiaries.

12 2. A new trustee to whom the trust property is to be
13 transferred shall be qualified, willing, and able to
14 administer the trust or trust property under the terms of the
15 trust.

16 3. If the trust or any portion of the trust property is
17 transferred to another jurisdiction and if approval of the
18 transfer by the other court is required under the law of the
19 other jurisdiction, the proper court in the other jurisdiction
20 must have approved the transfer in order for the transfer to
21 be effective.

22 4. If a transfer is ordered, the court may direct the
23 manner of transfer and impose terms and conditions as may be
24 just, including a requirement for the substitution of a
25 successor trustee in any pending litigation in this state. A
26 delivery of property in accordance with the order of the court
27 is a full discharge of the trustee with respect to all
28 property specified in the order.

29 5. If the court grants a petition to transfer a trust or
30 trust property to this state, the court shall require the
31 trustee to give a bond, if necessary under the law of the
32 other jurisdiction or of this state, and may require bond as
33 provided in section 633.4102.

34 Sec. 22. Section 633.6301, Code 2001, is amended by adding
35 the following new subsections:

1 NEW SUBSECTION. 4. Notice to a person who may represent
2 and bind another person under this chapter has the same effect
3 as if notice were given directly to the person represented.

4 NEW SUBSECTION. 5. The consent of a person who may
5 represent and bind another person under this chapter is
6 binding on the person represented unless the person
7 represented objects to the representation before the consent
8 would otherwise have become effective.

9 Sec. 23. NEW SECTION. 633.7101 DIVISION PREVAILS.

10 Notwithstanding any Code provision to the contrary, the
11 provisions of this Division XX shall prevail over any other
12 applicable Code provision.

13 EXPLANATION

14 This bill provides for a number of amendments to the Iowa
15 trust code.

16 The bill defines "qualified beneficiary" to mean any
17 beneficiary who, on the date the beneficiary's qualification
18 is determined, is eligible to receive income or principal, or
19 would receive property from the trustee upon immediate
20 termination of the trust. The bill makes numerous
21 modifications to the use of the term throughout the trust
22 code.

23 The bill provides that the power to select beneficiaries
24 under the trust must be exercised within a reasonable time, or
25 the power fails and the property passes to the person or
26 persons who would have taken the property had the power not
27 been conferred.

28 The bill provides that the court may reform the terms of
29 the trust, even if unambiguous, to conform to the settlor's
30 intent if it is proved by clear and convincing evidence that
31 the settlor's intent and the terms of the trust were affected
32 by a mistake of fact or law whether expressed or induced.

33 The bill provides that extrinsic evidence may be considered
in determining to whom to distribute the trust property when a
trust with insufficient value to justify continued

1 administration is terminated.

2 The bill substitutes the term "material" for the term
3 "substantial" when referring to conflicts between the
4 trustee's fiduciary and personal interests. The bill allows
5 the trustee in a capacity other than as trustee to invest in
6 mutual and proprietary funds even where the trustee provides
7 services to the fund. The investment must comply with the
8 prudent investor rule. If the trust pays a fee for these
9 services, the trustee must provide notification pursuant to
10 Code section 633.4213. The trustee is also permitted to
11 establish trust funds in the trustee's own banking department.

12 The bill also provides that the trustee shall keep the
13 qualified beneficiaries of the trust reasonably informed about
14 the administration of the trust and the material facts
15 necessary for the qualified beneficiaries to protect their
16 interests, including an annual accounting and a copy of the
17 trust instrument.

18 The bill provides certain provisions regarding the terms of
19 a trust relating to estate and gift tax consequences.

20 The bill provides additional trust powers to a trustee,
21 including certain actions necessary to accomplish the proper
22 management, investment, and distribution of the trust property
23 including trustee power to make certain discretionary
24 distributions, trustee participation in the operation of a
25 business or other enterprise that is part of the trust
26 property, trustee participation in an employee benefit or
27 retirement plan, annuity, or life insurance, trustee
28 participation in the distribution or division of trust
29 property, trustee participation in any potential environmental
30 law violations in regard to any trust property, trustee
31 participation in dispute resolution concerning the
32 interpretation of the trust, and trustee participation in
33 administering the trust upon termination.

34 The bill provides that a beneficiary may hold a trustee
35 liable for breach of trust, despite a consent, release, or

1 affirmance by the beneficiary, if at the time of such consent,
2 release or affirmance, the beneficiary did not know the
3 beneficiary's rights, the beneficiary did not know the
4 material facts known to the trustee or which the trustee
5 should have known, and the trustee did not reasonably believe
6 the beneficiary knew either of the above. The bill further
7 provides a beneficiary may hold a trustee liable for a breach
8 of trust if the beneficiary's consent, release, or affirmance
9 was induced by improper conduct on the part of the trustee.

10 The bill provides that a trustee is personally liable for
11 environmental law violations for torts committed in the course
12 of administering a trust only if the trustee is personally at
13 fault.

14 The bill provides that the district court has exclusive
15 jurisdiction over proceedings concerning the internal affairs
16 of a trust and of actions and proceedings to determine the
17 existence of a trust, actions and proceedings by or against
18 creditors or debtors of a trust, and other actions and
19 proceedings involving a trust and third persons.

20 The bill provides that notice to a representative is
21 considered to be binding on the person represented unless the
22 person represented objects to the representation before the
23 consent would otherwise have become effective.

24 The bill provides that, notwithstanding any Code provision
25 to the contrary, the provisions of this division XX shall
26 prevail over any other applicable Code provision.

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HOUSE FILE 2531

AN ACT

MAKING CERTAIN AMENDMENTS TO THE IOWA TRUST CODE.

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

Section 1. Section 633.1102, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 12A. "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined, is any of the following:

- a. Eligible to receive distributions of income or principal from the trust.
- b. Would receive property from the trust upon immediate termination of the trust.

Sec. 2. Section 633.2102, Code 2001, is amended to read as follows:

633.2102 REQUIREMENTS FOR VALIDITY.

1. A trust is created only if all of the following elements are satisfied:
 - a. The settlor was competent and indicated an intention to create a trust.
 - b. The same person is not the sole trustee and sole beneficiary.
 - c. ~~Unless the trust is a charitable trust, an honorary trust, or a trust for the care of an animal, the trust has a definite beneficiary or a beneficiary who will be definitely ascertained within the period of the applicable rule against perpetuities.~~ The trust has a definite beneficiary or a beneficiary who will be definitely ascertained within the period of the applicable rule against perpetuities, unless the trust is a charitable trust, an honorary trust, or a trust for pets.

2. A definite or definitely ascertainable beneficiary includes a beneficiary or class of beneficiaries designated under a power to select the beneficiaries granted by the terms of the trust to the trustee or another person. If the power is not exercised within a reasonable time, the power fails and the property passes to the person or persons who would have taken the property had the power not been conferred.

Sec. 3. Section 633.2201, subsection 3, Code 2001, is amended by striking the subsection.

Sec. 4. Section 633.2205, subsection 2, Code 2001, is amended to read as follows:

2. Upon termination of a trust under this section, the trustee shall distribute the trust property in accordance with the probable intention of the settlor under the circumstances. Extrinsic evidence is admissible for the purpose of ascertaining the probable intention of the settlor.

Sec. 5. Section 633.2206, subsection 1, Code 2001, is amended by striking the subsection and inserting in lieu thereof the following:

1. The court may reform the terms of the trust, even if unambiguous, to conform to the settlor's intent if it is proved by clear and convincing evidence that the settlor's intent and the terms of the trust were affected by a mistake of fact or law whether expressed or induced.

Sec. 6. Section 633.4105, subsection 2, paragraph b, subparagraphs (1) and (2), Code 2001, are amended to read as follows:

(1) By majority vote of all adult qualified beneficiaries, who are adults, and the representative of any minor or incompetent qualified beneficiary, as defined by section 633.6303.

(2) By a person appointed by the court on petition of an interested person or of a person named as trustee by the terms of the trust. The court, in selecting a trustee, shall consider any nomination made by the adult beneficiaries and representatives of any minor and incompetent beneficiaries.

Sec. 7. Section 633.4105, subsection 3, Code 2001, is amended by striking the subsection.

Sec. 8. Section 633.4106, subsection 1, paragraph c, Code 2001, is amended to read as follows:

c. With the consent of the ~~adult~~ qualified beneficiaries ~~as-defined-in-section-633-4105,-subsection-1,~~ who are adults if the trust is irrevocable or the holder of the power to revoke lacks competency or is not represented by a guardian, conservator, or agent.

Sec. 9. Section 633.4111, subsection 2, paragraph a, Code 2001, is amended to read as follows:

a. Each qualified beneficiary ~~who-is-entitled-to-an~~ accounting-under-section-633-4213,-subsection-6.

Sec. 10. Section 633.4202, subsections 2, 3, and 5, Code 2001, are amended to read as follows:

2. Any transaction involving the trust which is affected by a ~~substantial~~ material conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless one of the following applies:

a. The transaction was expressly authorized by the terms of the trust.

b. The beneficiary consented to or affirmed the transaction or released the trustee from liability as provided in section 633.4506.

c. The transaction is approved by the court after notice to interested persons.

3. A transaction affected by a ~~substantial~~ material conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the trust property entered into by the trustee, the spouse, descendant, agent, or attorney of a trustee, or corporation or other enterprise in which the trustee has a substantial beneficial interest.

5. This section does not apply to any of the following:

a. An agreement between a trustee and a beneficiary relating to the appointment of the trustee.

b. The payment of compensation to the trustee, whether by agreement, the terms of the trust, or this trust code.

c. A transaction between a trust and another trust, decedent's or conservatorship estate of which the trustee is a fiduciary if the transaction is fair to the beneficiaries of the trust.

d. An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee if the investment complies with the prudent investor rule. The trustee may be compensated by the investment company or investment trust for providing services from fees charged to the trust if the trustee provides annual notice and a copy of the trustee's annual report, including the rate and method by which the trustee's compensation was determined, to the persons specified in section 633.4213.

e. A deposit of trust money in a regulated financial service institution operated by the trustee.

Sec. 11. Section 633.4211, Code 2001, is amended to read as follows:

633.4211 ENFORCEMENT AND DEFENSE OF CLAIMS AND ACTIONS.

A trustee shall take reasonable steps to enforce claims ~~that-are-part-of-the-trust-property~~ of the trust, to defend claims against the trust, and to defend against actions that may result in a loss to the trust.

Sec. 12. Section 633.4213, Code Supplement 2001, is amended by striking the section and inserting in lieu thereof the following:

633.4213 DUTY TO INFORM AND ACCOUNT.

A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and the material facts necessary to protect the beneficiaries' interests.

1. The trustee shall inform each qualified beneficiary of their right to receive an annual accounting and a copy of the trust instrument. The trustee shall also inform each qualified beneficiary about the process necessary to obtain an annual accounting or a copy of the trust instrument, if not provided. The trustee shall further inform the beneficiary whether the beneficiary will, or will not, receive an annual accounting if the beneficiary fails to take any action. If a beneficiary has previously been provided the notice required by this section, additional notice shall not be required due to a change of trustees or a change in the composition of the qualified beneficiaries.

2. The trustee shall provide the notice required in subsection 1 to each qualified beneficiary within a reasonable time following any of the following events:

- a. The commencement of the trust administration.
- b. The trustee becoming aware that there is a new qualified beneficiary or a representative of any minor or incompetent beneficiary.
- c. The trust becoming irrevocable.
- d. The time that no person, except the trustee, has the right to change the beneficiaries of the trust.

3. A trustee of an irrevocable trust shall provide annually to each adult beneficiary and the representative of any minor or incompetent beneficiary who may receive a distribution of income or principal during the accounting time period, an accounting, unless an accounting has been waived specifically for a particular accounting time period.

4. This section does not apply to any trust where the grantor has retained the right, or has transferred the right, to change the beneficiaries of the trust.

5. The only consequence to a trustee's failure to provide a required accounting or notice is that the trustee shall not be able to rely upon the statute of limitations under section 633.4504. If the trustee has refused, after a reasonable request, to provide an accounting to a qualified beneficiary,

the court may assess costs, including attorney fees, against the trustee personally.

6. The format and content of an accounting required by this section shall be within the discretion of the trustee, if sufficient to reasonably inform the beneficiary of the condition and activities of the trust during the accounting period.

7. This section applies to any trust created on or after July 1, 2002, unless the trustor has specifically waived the requirements of this section in the trust instrument. Waiver of this section shall not bar any beneficiary's common-law right to an accounting, and shall not provide any immunity to a trustee, acting under the terms of the trust, for liability to any beneficiary who discovers facts giving rise to a cause of action against the trustee.

Sec. 13. Section 633.4214, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 3. Subject to paragraph "c" and unless the terms of the trust expressly indicate that a rule in this subsection does not apply, all of the following shall apply:

a. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee the power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986.

b. A trustee shall not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes to another person.

c. This subsection does not apply to the following:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, that was previously allowed.

(2) A trust that may be revoked or amended by the settlor.

(3) A trust, if contributions to the trust which qualify for an annual exclusion under section 2503(c) of the Internal Revenue Code of 1986.

NEW SUBSECTION. 4. A power whose exercise is limited or prohibited by subsection 3 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

Sec. 14. Section 633.4402, subsections 3, 6, 16, 25, and 27, Code 2001, are amended to read as follows:

3. Continue or participate in the operation of a business or other enterprise that is part of the trust property and affect an incorporation, dissolution, or other change in the form of the organization of the business or enterprise. With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue or participate in the operation of a business or other enterprise that is part of the trust and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of a business organization and contributing additional capital.

6. Manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property. Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise, and participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, deposit securities with and transfer title and delegate discretion to any protective or other committee as the trustee considers advisable.

16. Consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business

enterprise, and participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, deposit securities with and transfer title and delegate discretion to any protective or other committee as the trustee considers advisable. Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, and exercise rights thereunder, including the right to indemnification for expenses and against liabilities, and take appropriate action to collect proceeds.

25. Make a distribution of property and money in divided or undivided interests, pro-rata or non-pro-rata, and adjust resulting differences in valuation. Upon distribution of trust property or the division or termination of a trust, make distribution in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation.

27. Expend trust funds to inspect or investigate property that the trustee has been asked to hold, or property owned or operated by an entity in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law with respect to the property, and take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee. With respect to any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, a trustee shall do all of the following:

a. Inspect or investigate property the trustee holds or has been asked to hold or property owned or operated by an organization in which the trustee holds an interest in or has been asked to hold an interest in, and expend trust funds therefore, for the purpose of determining any potential environmental law violations with respect to the property.

b. Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement.

c. Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of any environmental law.

d. Negotiate claims against the trust which may be asserted for an alleged violation of environmental law.

e. Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.

Sec. 15. Section 633.4402, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 31. Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

NEW SUBSECTION. 32. Upon termination of the trust, exercise the powers necessary to conclude the administration of the trust and distribute the trust property to the person or persons entitled to the trust property.

Sec. 16. Section 633.4502, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 8. Order any other appropriate relief.

Sec. 17. Section 633.4506, subsection 2, Code 2001, is amended to read as follows:

2. Notwithstanding the provisions of subsection 1, a beneficiary may hold a trustee liable for breach of trust under either of the following circumstances despite a consent, release, or affirmation by the beneficiary, if, at the time of the consent, release, or affirmation, all of the following applied:

a. The beneficiary at the time of the consent, release, or affirmation did not know of the beneficiary's rights and of the material facts the trustee knew or should have known and the

trustee did not reasonably believe that the beneficiary knew did not know of the beneficiary's rights.

b. The consent, release, or affirmation of the beneficiary was induced by improper conduct of the trustee beneficiary did not know the material facts known to the trustee or which the trustee should have known.

c. The trustee did not reasonably believe that the beneficiary knew the beneficiary's rights or that the beneficiary knew material facts known to the trustee or which the trustee should have known.

Sec. 18. Section 633.4506, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 3. A beneficiary may hold a trustee liable for breach of a trust, despite a consent, release, or affirmation by the beneficiary, if the consent, release, or affirmation was induced by improper conduct of the trustee.

Sec. 19. Section 633.4601, subsection 2, Code 2001, is amended to read as follows:

2. A trustee is personally liable for obligations arising from ownership or control of trust property or, including liability for environmental law violations, and for torts committed in the course of administering a trust only if the trustee is personally at fault.

Sec. 20. Section 633.6101, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

633.6101 SUBJECT MATTER JURISDICTION.

The district court has exclusive jurisdiction of proceedings concerning the internal affairs of a trust and of actions and proceedings to determine the existence of a trust, actions and proceedings by or against creditors or debtors of a trust, and other actions and proceedings involving a trust and third persons.

Sec. 21. Section 633.6105, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

633.6105 TRANSFER OF JURISDICTION.

1. The court may transfer the place of administration of a trust to or from this state or transfer some or all of the trust property to a trustee in or outside this state if it finds that the transfer of the trust property to a trustee in this or another jurisdiction, or the transfer of the place of administration of a trust to this or another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the economical and convenient administration of the trust and the views of the qualified beneficiaries.

2. A new trustee to whom the trust property is to be transferred shall be qualified, willing, and able to administer the trust or trust property under the terms of the trust.

3. If the trust or any portion of the trust property is transferred to another jurisdiction and if approval of the transfer by the other court is required under the law of the other jurisdiction, the proper court in the other jurisdiction must have approved the transfer in order for the transfer to be effective.

4. If a transfer is ordered, the court may direct the manner of transfer and impose terms and conditions as may be just, including a requirement for the substitution of a successor trustee in any pending litigation in this state. A delivery of property in accordance with the order of the court is a full discharge of the trustee with respect to all property specified in the order.

5. If the court grants a petition to transfer a trust or trust property to this state, the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in section 633.4102.

Sec. 22. Section 633.6301, Code 2001, is amended by adding the following new subsections:

NEW SUBSECTION. 4. Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the person represented.

NEW SUBSECTION. 5. The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

Sec. 23. NEW SECTION. 633.7101 DIVISION PREVAILS.

Notwithstanding any Code provision to the contrary, the provisions of this Division XX shall prevail over any other applicable Code provision.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2531, Seventy-ninth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 4/11, 2002

THOMAS J. VILSACK
Governor