

Kreiman, Ch.  
Kettering  
Grundberg

HSB 671  
JUDICIARY

Successed By  
HOUSE FILE 502539  
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 relating to trusts and estates and their relationship to  
2 medical assistance benefits, the right to disclaim on behalf  
3 of a ward, the creation of total return unitrusts, and  
4 providing an effective date.

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

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1 Section 1. Section 249A.2, Code 2001, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 11. "Retained life estate" means any of  
4 the following:

5 a. A life estate created by the recipient or recipient's  
6 spouse, in which either the recipient or the recipient's  
7 spouse held any interest in the property at the time of the  
8 creation of the life estate.

9 b. A life estate created for the benefit of the recipient  
10 or the recipient's spouse in property in which either the  
11 recipient or the recipient's spouse held any interest in the  
12 property within five years prior to the creation of the life  
13 estate.

14 Sec. 2. Section 249A.3, Code Supplement 2001, is amended  
15 by adding the following new subsection:

16 NEW SUBSECTION. 14. In determining eligibility for  
17 federal supplemental security income benefits for purposes of  
18 medical assistance eligibility under subsection 1, paragraph  
19 "a", and subsection 2, paragraphs "a", "b", "d", "e", "h", and  
20 "i", the department shall increase the amount of the  
21 supplemental security income program's nonexempt resources or  
22 interests in resources set aside for burial expenses to  
23 include the average statewide cost reasonably necessary for a  
24 funeral and burial, including embalming, an inner burial  
25 container, an outer burial container, the purchase of  
26 interment rights, grave openings, and cemetery merchandise,  
27 excluding travel costs for members of the family to attend the  
28 funeral or burial, as established by the department by rule.

29 Sec. 3. Section 249A.5, subsection 2, paragraphs b and c,  
30 Code 2001, are amended to read as follows:

31 b. If the collection of all or part of a debt is waived  
32 pursuant to subsection 2, paragraph "a", ~~subparagraph (1)~~, the  
33 amount waived shall be a debt due from the estate of the  
34 recipient's surviving spouse, or child who is blind or has a  
35 disability, or the recipient of a hardship waiver under

1 subsection 2, paragraph "a", subparagraph (2), upon the death  
2 of the such spouse, or child or recipient, or due from a  
3 surviving child who was under twenty-one years of age at the  
4 time of the recipient's death, upon the child reaching age  
5 twenty-one, to the extent the recipient's estate is received  
6 by the-surviving such spouse, or child, or recipient.

7 c. For purposes of this section, the estate of a medical  
8 assistance recipient, surviving spouse, or surviving child  
9 includes any real property, personal property, or other asset  
10 in which the recipient, spouse, or child had any legal title  
11 or interest at the time of the recipient's, spouse's, or  
12 child's death, to the extent of such interests, including but  
13 not limited to interests in jointly held property, retained  
14 life estates, and interests in trusts.

15 Sec. 4. Section 633.647, Code 2001, is amended by adding  
16 the following new subsection:

17 NEW SUBSECTION. 6A. To exercise the right to disclaim on  
18 behalf of the ward as provided in section 633.704.

19 Sec. 5. Section 633.704, subsection 3, paragraph c, Code  
20 2001, is amended to read as follows:

21 c. DEATH OR DISABILITY OF DISCLAIMANT. If a person  
22 eligible to disclaim dies within the time allowed for a  
23 disclaimer, the right to disclaim continues for the time  
24 allowed and the personal representative of the person eligible  
25 to disclaim has the same right to disclaim as the disclaimant.  
26 If a person entitled to disclaim is disabled, the court may  
27 authorize or direct a conservator or guardian to exercise the  
28 right to disclaim on behalf of the person under disability if  
29 the court finds it is in the person's best interests pursuant  
30 to section 633.647.

31 Sec. 6. Section 637.601, Code 2001, is amended by striking  
32 the section and inserting in lieu thereof the following:

33 637.601 DEFINITIONS.

34 For purposes of this section:

35 1. "Disinterested person" means a person who is not a

1 related or subordinate party as defined in section 672(c) of  
2 the Internal Revenue Code with respect to the person acting as  
3 trustee of the trust and excludes the trustor of the trust and  
4 any interested trustee.

5 2. "Income trust" means a trust, created by either an  
6 inter vivos or a testamentary instrument, which directs or  
7 permits the trustee to distribute the net income of the trust  
8 to one or more persons, either in fixed proportions or in  
9 amounts or proportions determined by the trustee. However, a  
10 trust that does not meet this definition is nonetheless an  
11 income trust if the trust is subject to taxation under section  
12 2001 or 2501 of the Internal Revenue Code, until the  
13 expiration of the period for filing the return, including  
14 extensions.

15 3. "Interested distributee" means a person, to whom  
16 distributions of income or principal can currently be made,  
17 who has the power to remove the existing trustee and designate  
18 as successor a person who may be a related or subordinate  
19 party, as defined in section 672(c) of the Internal Revenue  
20 Code, with respect to such distributee.

21 4. "Interested trustee" means any of the following:

22 a. An individual trustee to whom the net income or  
23 principal of the trust can currently be distributed or would  
24 be distributed if the trust were to terminate and be  
25 distributed.

26 b. Any trustee who may be removed and replaced by an  
27 interested distributee.

28 c. An individual trustee whose legal obligation to support  
29 a beneficiary may be satisfied by distributions of income and  
30 principal of the trust.

31 5. "Total return unitrust" means an income trust which has  
32 been converted under and meets the provisions of this  
33 subchapter.

34 6. "Trustee" means a person acting as trustee of the  
35 trust, except where expressly noted otherwise, whether acting

1 in the trustee's discretion or on the direction of one or more  
2 persons acting in a fiduciary capacity.

3 7. "Trustor" means an individual who creates an inter  
4 vivos or a testamentary trust.

5 8. "Unitrust amount" means an amount computed as a  
6 percentage of the fair market value of the trust.

7 Sec. 7. NEW SECTION. 637.602 TRUSTEE'S AUTHORITY TO  
8 CONVERT.

9 A trustee, other than an interested trustee, or, where two  
10 or more persons are acting as trustee, a majority of the  
11 trustees who are not interested trustees, may, in the  
12 trustee's sole discretion and without the approval of the  
13 court, do any of the following subject to the requirements of  
14 section 637.603:

15 1. Convert an income trust to a total return unitrust.

16 2. Reconvert a total return unitrust to an income trust.

17 3. Change the method used to determine the fair market  
18 value of the trust.

19 Sec. 8. NEW SECTION. 637.603 TRUSTEE REQUIREMENTS TO  
20 CONVERT OR CHANGE COMPUTATION METHOD.

21 A trustee may proceed to take action under section 637.602  
22 if all of the following apply:

23 1. The trustee adopts a written policy for the trust as  
24 follows:

25 a. In the case of a trust being administered as an income  
26 trust, requiring that future distributions from the trust will  
27 be unitrust amounts rather than net income.

28 b. In the case of a trust being administered as a total  
29 return unitrust, requiring that future distributions from the  
30 trust will be net income rather than unitrust amounts.

31 c. Requiring that the method used to determine the fair  
32 market value of the trust will be changed as stated in the  
33 policy.

34 2. The trustee sends written notice of the trustee's  
35 intention to take any action described in subsection 1, along

1 with copies of such written policy and this subchapter, to all  
2 of the following persons:

3 a. The trustor of the trust, if living.

4 b. All living persons who are currently receiving or  
5 eligible to receive distributions of income of the trust.

6 c. All living persons who would receive principal of the  
7 trust if the trust were to terminate at the time of the giving  
8 of such notice, without regard to the exercise of any power of  
9 appointment or, if the trust does not provide for its  
10 termination, all living persons who would receive or be  
11 eligible to receive distributions of income or principal of  
12 the trust if the persons identified in paragraph "b" were  
13 deceased.

14 d. All persons named in the governing instrument as  
15 adviser to or protector of the trust.

16 3. At least one person receiving notice under subsection  
17 2, paragraph "b" and "c", is legally competent.

18 4. No person receiving such notice under subsection 2,  
19 objects, by written instrument delivered to the trustee, to  
20 the proposed action of the trustee within sixty days of  
21 receipt of such notice.

22 Sec. 9. NEW SECTION. 637.604 INTERESTED TRUSTEE'S  
23 AUTHORITY TO CONVERT.

24 If there is no trustee of the trust other than an  
25 interested trustee, the interested trustee or, where two or  
26 more persons are acting as trustee and are interested  
27 trustees, a majority of such interested trustees may, in the  
28 trustee's sole discretion and without the approval of the  
29 court, do any of the following subject to the requirements of  
30 section 637.605:

31 1. Convert an income trust to a total return unitrust.

32 2. Reconvert a total return unitrust to an income trust.

33 3. Change the method used to determine the fair market  
34 value of the trust.

35 Sec. 10. NEW SECTION. 637.605 INTERESTED TRUSTEE

1 REQUIREMENTS TO CONVERT OR CHANGE COMPUTATION METHOD.

2 An interested trustee may proceed to take action under  
3 section 637.604 if all of the following apply:

4 1. The trustee adopts a written policy for the trust as  
5 follows:

6 a. In the case of a trust being administered as an income  
7 trust, requiring that future distributions from the trust will  
8 be unitrust amounts rather than net income.

9 b. In the case of a trust being administered as a total  
10 return unitrust, requiring that future distributions from the  
11 trust will be net income rather than unitrust amounts.

12 c. Requiring that the method used to determine the fair  
13 market value of the trust will be changed as stated in the  
14 policy.

15 2. The trustee appoints a disinterested person who, in its  
16 sole discretion, but acting in a fiduciary capacity,  
17 determines for the trustee the method to be used in  
18 determining the fair market value of the trust, and which  
19 assets, if any, are to be excluded in determining the unitrust  
20 amount.

21 3. The trustee sends written notice of the trustee's  
22 intention to take any action described in subsection 1, along  
23 with copies of such written policy, this subchapter, and the  
24 determination of the disinterested person to all of the  
25 following persons:

26 a. The trustor of the trust, if living.

27 b. All living persons who are currently receiving or  
28 eligible to receive distributions of income of the trust.

29 c. All living persons who would receive principal of the  
30 trust if the trust were to terminate at the time of the giving  
31 of such notice, without regard to the exercise of any power of  
32 appointment or, if the trust does not provide for its  
33 termination, all living persons who would receive or be  
34 eligible to receive distributions of income or principal of  
35 the trust if the persons identified in paragraph "b" were

1 deceased.

2 d. All persons named in the governing instrument as  
3 adviser to or protector of the trust.

4 4. At least one person receiving notice under subsection  
5 3, paragraphs "b" and "c", is legally competent.

6 5. No person receiving the notice described in subsection  
7 3 objects, by written instrument delivered to the trustee, to  
8 the proposed action of the trustee within sixty days of  
9 receipt of such notice.

10 Sec. 11. NEW SECTION. 637.606 PETITION TO COURT TO  
11 CONVERT TRUST.

12 If any trustee desires to do any of the following but does  
13 not have the ability to or elects not to do so under the  
14 provisions of section 637.602 or 637.604, the trustee may  
15 petition the court for such order as the trustee deems  
16 appropriate:

17 1. Convert an income trust to a total return unitrust.

18 2. Reconvert a total return unitrust to an income trust.

19 3. Change the percentage used to calculate the unitrust  
20 amount or the method used to determine the fair market value  
21 of the trust.

22 If, however, there is only one trustee of such trust and  
23 such trustee is an interested trustee or in the event there  
24 are two or more trustees of such trust and a majority of them  
25 are interested trustees, the court, in its own discretion or  
26 upon the petition of such trustee or trustees or any person  
27 interested in the trust, may appoint a disinterested person  
28 who, acting in a fiduciary capacity, shall present such  
29 information to the court as necessary to enable the court to  
30 make its determinations.

31 Sec. 12. NEW SECTION. 637.607 VALUATION OF TRUST.

32 The fair market value of the trust shall be determined at  
33 least annually, using such valuation date or dates or averages  
34 of valuation dates as are deemed appropriate. Assets for  
35 which a fair market value cannot be readily ascertained shall

1 be valued using such valuation methods as are deemed  
2 reasonable and appropriate. Such assets may be excluded from  
3 valuation, provided all income received with respect to such  
4 assets is distributed to the extent distributable in  
5 accordance with the terms of the governing instrument.

6 Sec. 13. NEW SECTION. 637.608 PAYOUT PERCENTAGE.

7 The annual unitrust payout percentage shall be four percent  
8 unless the governing instrument specifically provides a  
9 different percentage or the court approves a percentage of not  
10 less than three percent or more than five percent after notice  
11 of intent to seek a payout percentage other than four percent  
12 has been given to all of the following persons:

- 13 1. The trustor of the trust, if living.
- 14 2. All living persons who are currently receiving or  
15 eligible to receive distributions of income of the trust.
- 16 3. All living persons who would receive principal of the  
17 trust if the trust were to terminate at the time of the giving  
18 of such notice without regard to the exercise of any power of  
19 appointment or, if the trust does not provide for its  
20 termination, all living persons who would receive or be  
21 eligible to receive distributions of income or principal of  
22 the trust if the persons identified in subsection 2 were  
23 deceased.
- 24 4. All persons named in the governing instrument as  
25 adviser to or protector of the trust.

26 Sec. 14. NEW SECTION. 637.609 UNITRUST AMOUNT.

27 The unitrust amount shall not be less than the net income  
28 of the trust, determined without regard to the provisions of  
29 section 637.610 for any of the following:

- 30 1. A trust for which a marital deduction has been taken  
31 for federal tax purposes under section 2056 or 2523 of the  
32 Internal Revenue Code, during the lifetime of the spouse for  
33 whom the trust was created.
- 34 2. A trust to which the generation-skipping transfer tax  
35 due under section 2601 of the Internal Revenue Code does not

1 apply by reason of any effective date or transition rule.

2 Sec. 15. NEW SECTION. 637.610 PROCEDURE UPON CONVERSION  
3 OF INCOME TRUST TO TOTAL RETURN UNITRUST.

4 Following the conversion of an income trust to a total  
5 return unitrust, the trustee:

6 1. Shall treat the unitrust amount as if it were net  
7 income of the trust for purposes of determining the amount  
8 available, from time to time, for distribution from the trust.

9 2. May allocate to trust income for each taxable year of  
10 the trust, or a portion thereof, both of the following:

11 a. Net short-term capital gain described in section  
12 1222(5) of the Internal Revenue Code for such year or portion  
13 thereof but only to the extent that the amount so allocated  
14 together with all other amounts allocated to trust income for  
15 such year or portion thereof, does not exceed the unitrust  
16 amount for such year or a portion thereof.

17 b. Net long-term capital gain described in section 1222(7)  
18 of the Internal Revenue Code for such year or a portion  
19 thereof but only to the extent that the amount so allocated  
20 together with all other amounts, including amounts described  
21 in paragraph "a", allocated to trust income for such year, or  
22 a portion thereof, does not exceed the unitrust amount for  
23 such year or a portion thereof.

24 Sec. 16. NEW SECTION. 637.611 TOTAL RETURN UNITRUST  
25 ADMINISTRATION.

26 In administering a total return unitrust, the trustee may,  
27 in the trustee's sole discretion but subject to the provisions  
28 of the governing instrument, determine all of the following:

29 1. The effective date of the conversion.

30 2. The timing of distributions, including provisions for  
31 prorating a distribution for a short year in which a  
32 beneficiary's right to payments commences or ceases.

33 3. Whether distributions are to be made in cash or in kind  
34 or partly in cash and partly in kind.

35 4. If the trust is reconverted to an income trust, the

1 effective date of such reconversion.

2 5. Such other administrative issues as may be necessary or  
3 appropriate to carry out the purposes of this subchapter.

4 Sec. 17. NEW SECTION. 637.612 PRINCIPAL DISTRIBUTIONS  
5 SUBJECT TO GOVERNING INSTRUMENT.

6 Conversion to a total return unitrust under the provisions  
7 of this subchapter shall not affect any other provision of the  
8 governing instrument, if any, regarding distributions of  
9 principal.

10 Sec. 18. NEW SECTION. 637.613 CONSTRUCTION AND  
11 APPLICABILITY.

12 This subchapter shall be construed as pertaining to the  
13 administration of a trust and shall be available to any trust  
14 that is administered in Iowa under Iowa law unless any of the  
15 following apply:

16 1. The governing instrument reflects an intention that the  
17 current beneficiary or beneficiaries are to receive an amount  
18 other than a reasonable current return from the trust.

19 2. The trust is a trust described in section 170(f)(2)(B),  
20 664(d), 1361(d), 2702(a)(3), or 2702(b) of the Internal  
21 Revenue Code.

22 3. One or more persons to whom the trustee could  
23 distribute income have a power of withdrawal over the trust  
24 that is not subject to an ascertainable standard under section  
25 2041 or 2514 of the Internal Revenue Code or that can be  
26 exercised to discharge a duty of support the person possesses.

27 4. The governing instrument expressly prohibits use of  
28 this subchapter by specific reference to the subchapter. A  
29 provision in the governing instrument that the provisions of  
30 sections 637.601 through 637.615 or any corresponding  
31 provision of future law shall not be used in the  
32 administration of this trust or similar words reflecting such  
33 intent shall be sufficient to preclude the use of this  
34 subchapter.

35 Sec. 19. NEW SECTION. 637.614 GOOD FAITH ACTIONS.

1 Any trustee or disinterested person who in good faith takes  
2 or fails to take any action under this subchapter shall not be  
3 liable to any person affected by such action or inaction,  
4 regardless of whether such person received written notice as  
5 provided in this subchapter and regardless of whether such  
6 person was under a legal disability at the time of the  
7 delivery of such notice. Such person's exclusive remedy shall  
8 be to obtain an order of the court directing the trustee to  
9 convert an income trust to a total return unitrust, or to  
10 reconvert a total return unitrust to an income trust.

11 Sec. 20. NEW SECTION. 637.615 EFFECTIVE DATE.

12 This subchapter takes effect upon the effective date of  
13 this Act and applies to trusts in existence on that date or  
14 created after that date.

15 SUBCHAPTER 7

16 MISCELLANEOUS PROVISIONS

17 Sec. 21. NEW SECTION. 637.701 APPLICATION OF CHAPTER TO  
18 EXISTING TRUSTS AND ESTATES -- CHAPTER PREVAILS.

19 This chapter applies to every trust or decedent's estate on  
20 and after July 1, 2000, except as otherwise expressly provided  
21 in the will, the terms of the trust, or this chapter.

22 Notwithstanding any Code provision to the contrary, the  
23 provisions of this chapter shall prevail over any other  
24 applicable Code provision.

25 Sec. 22. Section 633.667, Code 2001, is repealed.

26 Sec. 23. EFFECTIVE DATE. This Act, being deemed of  
27 immediate importance, takes effect upon enactment.

28 EXPLANATION

29 This bill relates to a number of Code revisions involving  
30 trusts and estates.

31 The bill increases the amount of nonexempt resources that a  
32 Medicaid recipient can set aside for burial expenses to the  
33 average statewide cost reasonably necessary for a funeral and  
34 burial.

35 The bill provides that if a medical assistance debt is

1 waived for a surviving spouse of a deceased Medicaid  
2 recipient, or for those dependents of the deceased Medicaid  
3 recipient who are under the age of 21, blind, or disabled, or  
4 a person who is the recipient of a hardship waiver, the debt  
5 shall be due from the estate of the recipient's surviving  
6 spouse, dependent child who is blind or has a disability, or  
7 person who is the recipient of a hardship waiver, upon the  
8 death of the spouse, child, or said person, or due from a  
9 surviving child who was under the age of 21 at the time of the  
10 recipient's death upon the child reaching the age of 21.

11 The bill limits estate recovery of medical assistance debts  
12 to life estates that were created by the Medicaid recipient or  
13 spouse. Current law allows the department of human services  
14 to pursue recovery of medical assistance debts regardless of  
15 the person or the entity that created them.

16 The bill also amends the probate code to allow a  
17 conservator, upon court order, to exercise the right to make  
18 disclaimers on behalf of the ward.

19 The bill further creates a new subchapter in Code chapter  
20 637, "Iowa's Uniform Principal and Income Act", relating to  
21 the total return unitrust. The purpose of the total return  
22 unitrust is to provide the trustee of an income trust the  
23 option to invest the trust assets in a way that provides  
24 income for the current income beneficiaries while maximizing  
25 the potential for long-term appreciation in trust assets  
26 sufficient to meet the needs of the remainder beneficiaries.  
27 The bill allows the trustee to elect to distribute annually 4  
28 percent of the trust's assets, based upon the fair market  
29 value of the trust, to the income beneficiaries regardless of  
30 the net income generated. The bill allows the trustee to  
31 elect to distribute between 3 percent and 5 percent of the  
32 trust's assets subject to court approval.

33 The bill also contains provisions which require the trustee  
34 to send written notice to certain persons in regard to any  
35 action taken by the trustee related to the trust.

1 The bill applies to all trusts administered in Iowa,  
2 regardless of whether administered by a corporation or an  
3 individual trustee, and also applies to trusts moved into  
4 Iowa.

5 The bill provides that the total return unitrust subchapter  
6 takes effect upon the effective date of the bill and applies  
7 to trusts in existence on that date or created after that  
8 date. The bill itself takes effect upon enactment.

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S-3/13/02 Judiciary  
S-3/14/02 Amend/No Pass  
W/S-5168

FEB 26 2002  
Place On Calendar

HOUSE FILE 2539  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 671)

Passed House, Date (P.790) 3-13-02 Passed Senate, Date (P.793) 3-25-02  
Vote: Ayes 95 Nays 0 Vote: Ayes 50 Nays 0  
Approved 4/5/02  
*re-passed 3-26-02* *Re-Allocated 1/20*  
*vote 93-0*

A BILL FOR

1 An Act relating to trusts and estates and their relationship to  
2 medical assistance benefits, the right to disclaim on behalf  
3 of a ward, the creation of total return unitrusts, and  
4 providing an effective date.

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

HF 2539

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1 Section 1. Section 249A.2, Code 2001, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 11. "Retained life estate" means any of  
4 the following:

5 a. A life estate created by the recipient or recipient's  
6 spouse, in which either the recipient or the recipient's  
7 spouse held any interest in the property at the time of the  
8 creation of the life estate.

9 b. A life estate created for the benefit of the recipient  
10 or the recipient's spouse in property in which either the  
11 recipient or the recipient's spouse held any interest in the  
12 property within five years prior to the creation of the life  
13 estate.

14 Sec. 2. Section 249A.3, Code Supplement 2001, is amended  
15 by adding the following new subsection:

16 NEW SUBSECTION. 14. In determining eligibility for  
17 federal supplemental security income benefits for purposes of  
18 medical assistance eligibility under subsection 1, paragraph  
19 "a", and subsection 2, paragraphs "a", "b", "d", "e", "h", and  
20 "i", the department shall increase the amount of the  
21 supplemental security income program's nonexempt resources or  
22 interests in resources set aside for burial expenses to  
23 include the average statewide cost reasonably necessary for a  
24 funeral and burial, including embalming, an inner burial  
25 container, an outer burial container, the purchase of  
26 interment rights, grave openings, and cemetery merchandise,  
27 excluding travel costs for members of the family to attend the  
28 funeral or burial, as established by the department by rule.

29 Sec. 3. Section 249A.5, subsection 2, paragraphs b and c,  
30 Code 2001, are amended to read as follows:

31 b. If the collection of all or part of a debt is waived  
32 pursuant to subsection 2, paragraph "a", ~~subparagraph-(1)~~, the  
33 amount waived shall be a debt due from the estate of the  
34 recipient's surviving spouse, or child who is blind or has a  
35 disability, or the recipient of a hardship waiver under

1 subsection 2, paragraph "a", subparagraph (2), upon the death  
2 of the such spouse, or child or recipient, or due from a  
3 surviving child who was under twenty-one years of age at the  
4 time of the recipient's death, upon the child reaching age  
5 twenty-one, to the extent the recipient's estate is received  
6 by the-surviving such spouse, or child, or recipient.

7 c. For purposes of this section, the estate of a medical  
8 assistance recipient, surviving spouse, or surviving child  
9 includes any real property, personal property, or other asset  
10 in which the recipient, spouse, or child had any legal title  
11 or interest at the time of the recipient's, spouse's, or  
12 child's death, to the extent of such interests, including but  
13 not limited to interests in jointly held property, retained  
14 life estates, and interests in trusts.

15 Sec. 4. Section 633.647, Code 2001, is amended by adding  
16 the following new subsection:

17 NEW SUBSECTION. 6A. To exercise the right to disclaim on  
18 behalf of the ward as provided in section 633.704.

19 Sec. 5. Section 633.704, subsection 3, paragraph c, Code  
20 2001, is amended to read as follows:

21 c. DEATH OR DISABILITY OF DISCLAIMANT. If a person  
22 eligible to disclaim dies within the time allowed for a  
23 disclaimer, the right to disclaim continues for the time  
24 allowed and the personal representative of the person eligible  
25 to disclaim has the same right to disclaim as the disclaimant.  
26 If a person entitled to disclaim is disabled, the court may  
27 authorize or direct a conservator or guardian to exercise the  
28 right to disclaim on behalf of the person under disability if  
29 the court finds it is in the person's best interests pursuant  
30 to section 633.647.

31 Sec. 6. Section 637.601, Code 2001, is amended by striking  
32 the section and inserting in lieu thereof the following:

33 637.601 DEFINITIONS.

34 For purposes of this section:

35 1. "Disinterested person" means a person who is not a

1 related or subordinate party as defined in section 672(c) of  
2 the Internal Revenue Code with respect to the person acting as  
3 trustee of the trust and excludes the trustor of the trust and  
4 any interested trustee.

5 2. "Income trust" means a trust, created by either an  
6 inter vivos or a testamentary instrument, which directs or  
7 permits the trustee to distribute the net income of the trust  
8 to one or more persons, either in fixed proportions or in  
9 amounts or proportions determined by the trustee. However, a  
10 trust that does not meet this definition is nonetheless an  
11 income trust if the trust is subject to taxation under section  
12 2001 or 2501 of the Internal Revenue Code, until the  
13 expiration of the period for filing the return, including  
14 extensions.

15 3. "Interested distributee" means a person, to whom  
16 distributions of income or principal can currently be made,  
17 who has the power to remove the existing trustee and designate  
18 as successor a person who may be a related or subordinate  
19 party, as defined in section 672(c) of the Internal Revenue  
20 Code, with respect to such distributee.

21 4. "Interested trustee" means any of the following:

22 a. An individual trustee to whom the net income or  
23 principal of the trust can currently be distributed or would  
24 be distributed if the trust were to terminate and be  
25 distributed.

26 b. Any trustee who may be removed and replaced by an  
27 interested distributee.

28 c. An individual trustee whose legal obligation to support  
29 a beneficiary may be satisfied by distributions of income and  
30 principal of the trust.

31 5. "Total return unitrust" means an income trust which has  
32 been converted under and meets the provisions of this  
33 subchapter.

34 6. "Trustee" means a person acting as trustee of the  
35 trust, except where expressly noted otherwise, whether acting

1 in the trustee's discretion or on the direction of one or more  
2 persons acting in a fiduciary capacity.

3 7. "Trustor" means an individual who creates an inter  
4 vivos or a testamentary trust.

5 8. "Unitrust amount" means an amount computed as a  
6 percentage of the fair market value of the trust.

7 Sec. 7. NEW SECTION. 637.602 TRUSTEE'S AUTHORITY TO  
8 CONVERT.

9 A trustee, other than an interested trustee, or, where two  
10 or more persons are acting as trustee, a majority of the  
11 trustees who are not interested trustees, may, in the  
12 trustee's sole discretion and without the approval of the  
13 court, do any of the following subject to the requirements of  
14 section 637.603:

15 1. Convert an income trust to a total return unitrust.

16 2. Reconvert a total return unitrust to an income trust.

17 3. Change the method used to determine the fair market  
18 value of the trust.

19 Sec. 8. NEW SECTION. 637.603 TRUSTEE REQUIREMENTS TO  
20 CONVERT OR CHANGE COMPUTATION METHOD.

21 A trustee may proceed to take action under section 637.602  
22 if all of the following apply:

23 1. The trustee adopts a written policy for the trust as  
24 follows:

25 a. In the case of a trust being administered as an income  
26 trust, requiring that future distributions from the trust will  
27 be unitrust amounts rather than net income.

28 b. In the case of a trust being administered as a total  
29 return unitrust, requiring that future distributions from the  
30 trust will be net income rather than unitrust amounts.

31 c. Requiring that the method used to determine the fair  
32 market value of the trust will be changed as stated in the  
33 policy.

34 2. The trustee sends written notice of the trustee's  
35 intention to take any action described in subsection 1, along

1 with copies of such written policy and this subchapter, to all  
2 of the following persons:

3 a. The trustor of the trust, if living.

4 b. All living persons who are currently receiving or  
5 eligible to receive distributions of income of the trust.

6 c. All living persons who would receive principal of the  
7 trust if the trust were to terminate at the time of the giving  
8 of such notice, without regard to the exercise of any power of  
9 appointment or, if the trust does not provide for its  
10 termination, all living persons who would receive or be  
11 eligible to receive distributions of income or principal of  
12 the trust if the persons identified in paragraph "b" were  
13 deceased.

14 d. All persons named in the governing instrument as  
15 adviser to or protector of the trust.

16 3. At least one person receiving notice under subsection  
17 2, paragraph "b" and "c", is legally competent.

18 4. No person receiving such notice under subsection 2,  
19 objects, by written instrument delivered to the trustee, to  
20 the proposed action of the trustee within sixty days of  
21 receipt of such notice.

22 Sec. 9. NEW SECTION. 637.604 INTERESTED TRUSTEE'S  
23 AUTHORITY TO CONVERT.

24 If there is no trustee of the trust other than an  
25 interested trustee, the interested trustee or, where two or  
26 more persons are acting as trustee and are interested  
27 trustees, a majority of such interested trustees may, in the  
28 trustee's sole discretion and without the approval of the  
29 court, do any of the following subject to the requirements of  
30 section 637.605:

31 1. Convert an income trust to a total return unitrust.

32 2. Reconvert a total return unitrust to an income trust.

33 3. Change the method used to determine the fair market  
34 value of the trust.

35 Sec. 10. NEW SECTION. 637.605 INTERESTED TRUSTEE

1 REQUIREMENTS TO CONVERT OR CHANGE COMPUTATION METHOD.

2 An interested trustee may proceed to take action under  
3 section 637.604 if all of the following apply:

4 1. The trustee adopts a written policy for the trust as  
5 follows:

6 a. In the case of a trust being administered as an income  
7 trust, requiring that future distributions from the trust will  
8 be unitrust amounts rather than net income.

9 b. In the case of a trust being administered as a total  
10 return unitrust, requiring that future distributions from the  
11 trust will be net income rather than unitrust amounts.

12 c. Requiring that the method used to determine the fair  
13 market value of the trust will be changed as stated in the  
14 policy.

15 2. The trustee appoints a disinterested person who, in its  
16 sole discretion, but acting in a fiduciary capacity,

17 determines for the trustee the method to be used in  
18 determining the fair market value of the trust, and which  
19 assets, if any, are to be excluded in determining the unitrust  
20 amount.

21 3. The trustee sends written notice of the trustee's  
22 intention to take any action described in subsection 1, along  
23 with copies of such written policy, this subchapter, and the  
24 determination of the disinterested person to all of the  
25 following persons:

26 a. The trustor of the trust, if living.

27 b. All living persons who are currently receiving or  
28 eligible to receive distributions of income of the trust.

29 c. All living persons who would receive principal of the  
30 trust if the trust were to terminate at the time of the giving  
31 of such notice, without regard to the exercise of any power of  
32 appointment or, if the trust does not provide for its  
33 termination, all living persons who would receive or be

34 eligible to receive distributions of income or principal of  
35 the trust if the persons identified in paragraph "b" were

1 deceased.

2 d. All persons named in the governing instrument as  
3 adviser to or protector of the trust.

4 4. At least one person receiving notice under subsection  
5 3, paragraphs "b" and "c", is legally competent.

6 5. No person receiving the notice described in subsection  
7 3 objects, by written instrument delivered to the trustee, to  
8 the proposed action of the trustee within sixty days of  
9 receipt of such notice.

10 Sec. 11. NEW SECTION. 637.606 PETITION TO COURT TO  
11 CONVERT TRUST.

12 If any trustee desires to do any of the following but does  
13 not have the ability to or elects not to do so under the  
14 provisions of section 637.602 or 637.604, the trustee may  
15 petition the court for such order as the trustee deems  
16 appropriate:

17 1. Convert an income trust to a total return unitrust.

18 2. Reconvert a total return unitrust to an income trust.

19 3. Change the percentage used to calculate the unitrust  
20 amount or the method used to determine the fair market value  
21 of the trust.

22 If, however, there is only one trustee of such trust and  
23 such trustee is an interested trustee or in the event there  
24 are two or more trustees of such trust and a majority of them  
25 are interested trustees, the court, in its own discretion or  
26 upon the petition of such trustee or trustees or any person  
27 interested in the trust, may appoint a disinterested person  
28 who, acting in a fiduciary capacity, shall present such  
29 information to the court as necessary to enable the court to  
30 make its determinations.

31 Sec. 12. NEW SECTION. 637.607 VALUATION OF TRUST.

32 The fair market value of the trust shall be determined at  
33 least annually, using such valuation date or dates or averages  
34 of valuation dates as are deemed appropriate. Assets for  
35 which a fair market value cannot be readily ascertained shall

1 be valued using such valuation methods as are deemed  
2 reasonable and appropriate. Such assets may be excluded from  
3 valuation, provided all income received with respect to such  
4 assets is distributed to the extent distributable in  
5 accordance with the terms of the governing instrument.

6 Sec. 13. NEW SECTION. 637.608 PAYOUT PERCENTAGE.

7 The annual unitrust payout percentage shall be four percent  
8 unless the governing instrument specifically provides a  
9 different percentage or the court approves a percentage of not  
10 less than three percent or more than five percent after notice  
11 of intent to seek a payout percentage other than four percent  
12 has been given to all of the following persons:

13 1. The trustor of the trust, if living.

14 2. All living persons who are currently receiving or  
15 eligible to receive distributions of income of the trust.

16 3. All living persons who would receive principal of the  
17 trust if the trust were to terminate at the time of the giving  
18 of such notice without regard to the exercise of any power of  
19 appointment or, if the trust does not provide for its  
20 termination, all living persons who would receive or be  
21 eligible to receive distributions of income or principal of  
22 the trust if the persons identified in subsection 2 were  
23 deceased.

24 4. All persons named in the governing instrument as  
25 adviser to or protector of the trust.

26 Sec. 14. NEW SECTION. 637.609 UNITRUST AMOUNT.

27 The unitrust amount shall not be less than the net income  
28 of the trust, determined without regard to the provisions of  
29 section 637.610 for any of the following:

30 1. A trust for which a marital deduction has been taken  
31 for federal tax purposes under section 2056 or 2523 of the  
32 Internal Revenue Code, during the lifetime of the spouse for  
33 whom the trust was created.

34 2. A trust to which the generation-skipping transfer tax  
35 due under section 2601 of the Internal Revenue Code does not

1 apply by reason of any effective date or transition rule.

2 Sec. 15. NEW SECTION. 637.610 PROCEDURE UPON CONVERSION  
3 OF INCOME TRUST TO TOTAL RETURN UNITRUST.

4 Following the conversion of an income trust to a total  
5 return unitrust, the trustee:

6 1. Shall treat the unitrust amount as if it were net  
7 income of the trust for purposes of determining the amount  
8 available, from time to time, for distribution from the trust.

9 2. May allocate to trust income for each taxable year of  
10 the trust, or a portion thereof, both of the following:

11 a. Net short-term capital gain described in section  
12 1222(5) of the Internal Revenue Code for such year or portion  
13 thereof but only to the extent that the amount so allocated  
14 together with all other amounts allocated to trust income for  
15 such year or portion thereof, does not exceed the unitrust  
16 amount for such year or a portion thereof.

17 b. Net long-term capital gain described in section 1222(7)  
18 of the Internal Revenue Code for such year or a portion  
19 thereof but only to the extent that the amount so allocated  
20 together with all other amounts, including amounts described  
21 in paragraph "a", allocated to trust income for such year, or  
22 a portion thereof, does not exceed the unitrust amount for  
23 such year or a portion thereof.

24 Sec. 16. NEW SECTION. 637.611 TOTAL RETURN UNITRUST  
25 ADMINISTRATION.

26 In administering a total return unitrust, the trustee may,  
27 in the trustee's sole discretion but subject to the provisions  
28 of the governing instrument, determine all of the following:

29 1. The effective date of the conversion.

30 2. The timing of distributions, including provisions for  
31 prorating a distribution for a short year in which a  
32 beneficiary's right to payments commences or ceases.

33 3. Whether distributions are to be made in cash or in kind  
34 or partly in cash and partly in kind.

35 4. If the trust is reconverted to an income trust, the

1 effective date of such reconversion.

2 5. Such other administrative issues as may be necessary or  
3 appropriate to carry out the purposes of this subchapter.

4 Sec. 17. NEW SECTION. 637.612 PRINCIPAL DISTRIBUTIONS  
5 SUBJECT TO GOVERNING INSTRUMENT.

6 Conversion to a total return unitrust under the provisions  
7 of this subchapter shall not affect any other provision of the  
8 governing instrument, if any, regarding distributions of  
9 principal.

10 Sec. 18. NEW SECTION. 637.613 CONSTRUCTION AND  
11 APPLICABILITY.

12 This subchapter shall be construed as pertaining to the  
13 administration of a trust and shall be available to any trust  
14 that is administered in Iowa under Iowa law unless any of the  
15 following apply:

16 1. The governing instrument reflects an intention that the  
17 current beneficiary or beneficiaries are to receive an amount  
18 other than a reasonable current return from the trust.

19 2. The trust is a trust described in section 170(f)(2)(B),  
20 664(d), 1361(d), 2702(a)(3), or 2702(b) of the Internal  
21 Revenue Code.

22 3. One or more persons to whom the trustee could  
23 distribute income have a power of withdrawal over the trust  
24 that is not subject to an ascertainable standard under section  
25 2041 or 2514 of the Internal Revenue Code or that can be  
26 exercised to discharge a duty of support the person possesses.

27 4. The governing instrument expressly prohibits use of  
28 this subchapter by specific reference to the subchapter. A  
29 provision in the governing instrument that the provisions of  
30 sections 637.601 through 637.615 or any corresponding  
31 provision of future law shall not be used in the  
32 administration of this trust or similar words reflecting such  
33 intent shall be sufficient to preclude the use of this  
34 subchapter.

35 Sec. 19. NEW SECTION. 637.614 GOOD FAITH ACTIONS.

1 Any trustee or disinterested person who in good faith takes  
2 or fails to take any action under this subchapter shall not be  
3 liable to any person affected by such action or inaction,  
4 regardless of whether such person received written notice as  
5 provided in this subchapter and regardless of whether such  
6 person was under a legal disability at the time of the  
7 delivery of such notice. Such person's exclusive remedy shall  
8 be to obtain an order of the court directing the trustee to  
9 convert an income trust to a total return unitrust, or to  
10 reconvert a total return unitrust to an income trust.

11 Sec. 20. NEW SECTION. 637.615 EFFECTIVE DATE.

12 This subchapter takes effect upon the effective date of  
13 this Act and applies to trusts in existence on that date or  
14 created after that date.

15 SUBCHAPTER 7

16 MISCELLANEOUS PROVISIONS

17 Sec. 21. NEW SECTION. 637.701 APPLICATION OF CHAPTER TO  
18 EXISTING TRUSTS AND ESTATES -- CHAPTER PREVAILS.

19 This chapter applies to every trust or decedent's estate on  
20 and after July 1, 2000, except as otherwise expressly provided  
21 in the will, the terms of the trust, or this chapter.  
22 Notwithstanding any Code provision to the contrary, the  
23 provisions of this chapter shall prevail over any other  
24 applicable Code provision.

25 Sec. 22. Section 633.667, Code 2001, is repealed.

26 Sec. 23. EFFECTIVE DATE. This Act, being deemed of  
27 immediate importance, takes effect upon enactment.

28 EXPLANATION

29 This bill relates to a number of Code revisions involving  
30 trusts and estates.

31 The bill increases the amount of nonexempt resources that a  
32 Medicaid recipient can set aside for burial expenses to the  
33 average statewide cost reasonably necessary for a funeral and  
34 burial.

35 The bill provides that if a medical assistance debt is

1 waived for a surviving spouse of a deceased Medicaid  
2 recipient, or for those dependents of the deceased Medicaid  
3 recipient who are under the age of 21, blind, or disabled, or  
4 a person who is the recipient of a hardship waiver, the debt  
5 shall be due from the estate of the recipient's surviving  
6 spouse, dependent child who is blind or has a disability, or  
7 person who is the recipient of a hardship waiver, upon the  
8 death of the spouse, child, or said person, or due from a  
9 surviving child who was under the age of 21 at the time of the  
10 recipient's death upon the child reaching the age of 21.

11 The bill limits estate recovery of medical assistance debts  
12 to life estates that were created by the Medicaid recipient or  
13 spouse. Current law allows the department of human services  
14 to pursue recovery of medical assistance debts regardless of  
15 the person or the entity that created them.

16 The bill also amends the probate code to allow a  
17 conservator, upon court order, to exercise the right to make  
18 disclaimers on behalf of the ward.

19 The bill further creates a new subchapter in Code chapter  
20 637, "Iowa's Uniform Principal and Income Act", relating to  
21 the total return unitrust. The purpose of the total return  
22 unitrust is to provide the trustee of an income trust the  
23 option to invest the trust assets in a way that provides  
24 income for the current income beneficiaries while maximizing  
25 the potential for long-term appreciation in trust assets  
26 sufficient to meet the needs of the remainder beneficiaries.  
27 The bill allows the trustee to elect to distribute annually 4  
28 percent of the trust's assets, based upon the fair market  
29 value of the trust, to the income beneficiaries regardless of  
30 the net income generated. The bill allows the trustee to  
31 elect to distribute between 3 percent and 5 percent of the  
32 trust's assets subject to court approval.

33 The bill also contains provisions which require the trustee  
34 to send written notice to certain persons in regard to any  
35 action taken by the trustee related to the trust.

1 The bill applies to all trusts administered in Iowa,  
2 regardless of whether administered by a corporation or an  
3 individual trustee, and also applies to trusts moved into  
4 Iowa.

5 The bill provides that the total return unitrust subchapter  
6 takes effect upon the effective date of the bill and applies  
7 to trusts in existence on that date or created after that  
8 date. The bill itself takes effect upon enactment.

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HOUSE FILE 2539

H-8191

1 Amend House File 2539 as follows:

2 1. Page 2, line 25, by inserting after the word  
3 "disclaimant" the following: "~~and may disclaim on~~  
4 ~~behalf of the personal representative's decedent~~".

5 2. Page 9, by striking lines 9 through 23, and  
6 inserting the following:

7 "2. Shall allocate an amount to trust income, not  
8 in excess of the annual unitrust payout amount, in the  
9 following order:

10 a. The amount derived from net income, as  
11 determined if the trust were other than a total return  
12 unitrust.

13 b. The amount derived from other ordinary income  
14 as determined for federal income tax purposes.

15 c. The amount derived from net realized short-term  
16 capital gains as determined for federal income tax  
17 purposes.

18 d. The amount derived from net realized long-term  
19 capital gains as determined for federal income tax  
20 purposes.

21 e. The amount derived from trust principal."

By KREIMAN of Davis  
KETTERING of Sac

H-8191 FILED MARCH 5, 2002

*W/D*

*3-13-02 (p. 789)* HOUSE FILE 2539

H-8205

1 Amend House File 2539 as follows:

2 1. Page 1, line 28, by inserting after the word  
3 "rule." the following: "This subsection does not  
4 affect the use or validity of prepaid nonrevocable  
5 burial contracts or arrangements for any purpose  
6 including, but not limited to, the impact of such  
7 contract or arrangement on eligibility for medical  
8 assistance under this chapter."

9 2. By renumbering as necessary.

By KREIMAN of Davis

H-8205 FILED MARCH 6, 2002

*W/D*

*3/13/02*

*(p. 790)*

SENATE AMENDMENT TO HOUSE FILE 2539

H-8431

1 Amend House File 2539, as passed by the House, as  
2 follows:

3 1. Page 1, by striking lines 14 through 28.

4 2. Page 2, line 25, by inserting after the word  
5 "disclaimant" the following: "~~and may disclaim on~~  
6 ~~behalf of the personal representative's decedent~~".

7 3. Page 9, by striking lines 9 through 23, and  
8 inserting the following:

9 "2. Shall allocate an amount to trust income, not  
10 in excess of the annual unitrust payout amount, in the  
11 following order:

12 a. The amount derived from net income, as  
13 determined if the trust were other than a total return  
14 unitrust.

15 b. The amount derived from other ordinary income  
16 as determined for federal income tax purposes.

17 c. The amount derived from net realized short-term  
18 capital gains as determined for federal income tax  
19 purposes.

20 d. The amount derived from net realized long-term  
21 capital gains as determined for federal income tax  
22 purposes.

23 e. The amount derived from trust principal."

24 4. Page 11, by striking line 25.

25 5. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-8431 FILED MARCH 25, 2002

*House Concurred*  
*3-26-02 (P. 1004)*

# Legislative Fiscal Bureau

## Fiscal Note

HF 2539 - Probate, Omnibus (LSB 5150 HV)

Analyst: Jennifer Dean (Phone: (515) 281-7846) (jennifer.dean@legis.state.ia.us)

Fiscal Note Version - New

### Description

House File 2539 relates to trusts and estates and their relationship to medical assistance benefits, the right to disclaim on behalf of the ward, the creation of total return unitrusts, and providing an effective date.

### Assumptions

1. House File 2539 increases the amount of nonexempt resources that a Medicaid recipient can set aside for burial expenses to the average Statewide cost reasonably necessary for a funeral and burial.
2. There are 1,200 applications to nursing facilities and 50.0% are new applications and 50.0% are re-applications.
3. Increasing the burial allowance from \$1,500 to \$7,373 will only affect those in nursing facilities.
4. Under current law, if someone applies for Title XIX and has resources set-aside for burial purposes, they are required to obtain a burial contract before receiving Medicaid eligibility, which usually delays benefits by one month.
5. Under proposed legislation, the burial set-aside will be excluded from resource consideration immediately by informing the DHS. The applicant will not lose a month in eligibility, which occurs under current law.
6. An increase in burial set-aside will add new eligibles one month earlier at a cost of \$2,537 a month in FY 2003 and \$2,791 in FY 2004.
7. The State match will be 36.66%.
8. There are three retained life estate recoveries per month. Of these, one is settled without problem, while two result in court action. Of those two per month that result in court action, one case is generally decided in favor of the DHS and one case is decided against the Department. The Bill will likely allow Estate Recovery to settle on the one case decided against the DHS. The average value of a retained life estate is \$13,000 per month.
9. Section 19 creates a new cause of action (Good Faith Actions) that would potentially result in more cases before the courts. Good faith action would cost approximately \$320 per case. The number of cases that would result in unknown.

### Fiscal Impact

The fiscal impact of HF 2539 would result in a net increase in General Fund expenditures of \$6.6 million for FY 2003 and \$7.3 million for FY 2004. Detailed breakdown follows:

|   | <u>FY 2003</u>          | <u>FY 2004</u>          |
|---|-------------------------|-------------------------|
| <b>Burial Allowances (Section 2)</b>              |                         |                         |
| State Share                                       | \$ 6.7 million          | \$ 7.4 million          |
| Federal Share                                     | 11.6 million            | 12.6 million            |
| Total Increased Expenditures                      | <u>\$18.3 million</u>   | <u>\$20.0 million</u>   |
| <b>Retained Life Estates (Sections 1 &amp; 3)</b> |                         |                         |
| State Share                                       | \$ 0.059 million        | \$ 0.059 million        |
| Federal Share                                     | 0.101 million           | 0.101 million           |
| Total Recoveries                                  | <u>\$ 0.160 million</u> | <u>\$ 0.160 million</u> |
| <b>Good Faith Actions (Section 19)</b>            | <u>unknown</u>          | <u>unknown</u>          |

Net Increase in Expenditures

\$18.1 million

\$19.4 million

**Sources**

Department of Human Services  
Judicial Branch

/s/ Dennis C Prouty

March 12, 2002

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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# Legislative Fiscal Bureau Fiscal Note

HF 2539 - Probate, Omnibus (LSB 5150 HV.1)

Analyst: Jennifer Dean (Phone: (515) 281-7846) (jennifer.dean@legis.state.ia.us)

Fiscal Note Version -- Amended Bill

## Description

House File 2539 as amended and passed by the Senate relates to trusts and estates and their relationship to medical assistance benefits, the right to disclaim on behalf of the ward, the creation of total return unitrusts, and providing an effective date.

## Assumptions

1. House File 2539 as amended and passed by the Senate adds language to the Code of Iowa for definition of estates to include retained life estates.
2. There are three retained life estate recoveries per month. Of these, one is settled without problem, while two result in court action. Of those two per month that result in court action, one case is generally decided in favor of the DHS and one case is decided against the Department. The Bill will likely allow Estate Recovery to settle on the one case decided against the DHS. The average value of a retained life estate is \$13,000 per month.
3. Section 19 creates a new cause of action (Good Faith Actions) that would potentially result in more cases before the courts. Good faith action would cost approximately \$320 per case. The number of cases that would result in unknown.

## Fiscal Impact

The fiscal impact of HF 2539 as amended and passed by the Senate would result in a net increase in General Fund revenues of \$59,000 for FY 2003 and each year thereafter. Detailed breakdown follows:

|  | <u>Medical Assistance Recoveries</u> |                   |
|--|--------------------------------------|-------------------|
|  | <u>FY 2003</u>                       | <u>FY 2004</u>    |
| Retained Life Estates (Sections 1 & 3) |                                      |                   |
| State Share                            | \$ 59,000                            | \$ 59,000         |
| Federal Share                          | 101,000                              | 101,000           |
| Total Recoveries                       | <u>\$ 160,000</u>                    | <u>\$ 160,000</u> |
| Good Faith Actions (Section 19)        | unknown                              | unknown           |
| Total Revenue                          | <u>\$ 160,000</u>                    | <u>\$ 160,000</u> |

## Sources

Department of Human Services  
Judicial Branch

/s/ Dennis C Prouty

March 26, 2002

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

## HOUSE FILE 2539

## S-5168

- 1 Amend House File 2539, as passed by the House, as  
2 follows:
- 3 1. Page 1, by striking lines 14 through 28.  
4 2. Page 2, line 25, by inserting after the word  
5 "disclaimant" the following: "~~and may disclaim on~~  
6 ~~behalf of the personal representative's decedent~~".  
7 3. Page 9, by striking lines 9 through 23, and  
8 inserting the following:  
9 "2. Shall allocate an amount to trust income, not  
10 in excess of the annual unitrust payout amount, in the  
11 following order:  
12 a. The amount derived from net income, as  
13 determined if the trust were other than a total return  
14 unitrust.  
15 b. The amount derived from other ordinary income  
16 as determined for federal income tax purposes.  
17 c. The amount derived from net realized short-term  
18 capital gains as determined for federal income tax  
19 purposes.  
20 d. The amount derived from net realized long-term  
21 capital gains as determined for federal income tax  
22 purposes.  
23 e. The amount derived from trust principal."  
24 4. Page 11, by striking line 25.  
25 5. By renumbering as necessary.

By COMMITTEE ON JUDICIARY  
O. GENE MADDOX, Chairperson

S-5168 FILED MARCH 14, 2002

*Adopted*  
*3-25-02*  
*(p. 792)*

HOUSE FILE 2539

AN ACT  
RELATING TO TRUSTS AND ESTATES AND THEIR RELATIONSHIP TO  
MEDICAL ASSISTANCE BENEFITS, THE RIGHT TO DISCLAIM ON BEHALF  
OF A WARD, THE CREATION OF TOTAL RETURN UNITRUSTS, AND  
PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 249A.2, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 11. "Retained life estate" means any of the following:

a. A life estate created by the recipient or recipient's spouse, in which either the recipient or the recipient's spouse held any interest in the property at the time of the creation of the life estate.

b. A life estate created for the benefit of the recipient or the recipient's spouse in property in which either the recipient or the recipient's spouse held any interest in the property within five years prior to the creation of the life estate.

Sec. 2. Section 249A.5, subsection 2, paragraphs b and c, Code 2001, are amended to read as follows:

b. If the collection of all or part of a debt is waived pursuant to subsection 2, paragraph "a", ~~subparagraph (1)~~ the amount waived shall be a debt due from the estate of the recipient's surviving spouse, or child who is blind or has a disability, or the recipient of a hardship waiver under subsection 2, paragraph "a", subparagraph (2), upon the death of the such spouse, or child or recipient, or due from a surviving child who was under twenty-one years of age at the time of the recipient's death, upon the child reaching age twenty-one, to the extent the recipient's estate is received by ~~the surviving~~ such spouse, or child, or recipient.

c. For purposes of this section, the estate of a medical assistance recipient, surviving spouse, or surviving child includes any real property, personal property, or other asset in which the recipient, spouse, or child had any legal title or interest at the time of the recipient's, spouse's, or child's death, to the extent of such interests, including but not limited to interests in jointly held property, retained life estates, and interests in trusts.

Sec. 3. Section 633.647, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 6A. To exercise the right to disclaim on behalf of the ward as provided in section 633.704.

Sec. 4. Section 633.704, subsection 3, paragraph c, Code 2001, is amended to read as follows:

c. DEATH OR DISABILITY OF DISCLAIMANT. If a person eligible to disclaim dies within the time allowed for a disclaimer, the right to disclaim continues for the time allowed and the personal representative of the person eligible to disclaim has the same right to disclaim as the disclaimant ~~and may disclaim on behalf of the personal representative's decedent.~~ If a person entitled to disclaim is disabled, the court may authorize or direct a conservator or guardian to exercise the right to disclaim on behalf of the person under disability if the court finds it is in the person's best interests pursuant to section 633.647.

Sec. 5. Section 637.601, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

637.601 DEFINITIONS.

For purposes of this section:

1. "Disinterested person" means a person who is not a related or subordinate party as defined in section 672(c) of the Internal Revenue Code with respect to the person acting as trustee of the trust and excludes the trustor of the trust and any interested trustee.

2. "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust

to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. However, a trust that does not meet this definition is nonetheless an income trust if the trust is subject to taxation under section 2001 or 2501 of the Internal Revenue Code, until the expiration of the period for filing the return, including extensions.

3. "Interested distributee" means a person, to whom distributions of income or principal can currently be made, who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party, as defined in section 672(c) of the Internal Revenue Code, with respect to such distributee.

4. "Interested trustee" means any of the following:

a. An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were to terminate and be distributed.

b. Any trustee who may be removed and replaced by an interested distributee.

c. An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

5. "Total return unitrust" means an income trust which has been converted under and meets the provisions of this subchapter.

6. "Trustee" means a person acting as trustee of the trust, except where expressly noted otherwise, whether acting in the trustee's discretion or on the direction of one or more persons acting in a fiduciary capacity.

7. "Trustor" means an individual who creates an inter vivos or a testamentary trust.

8. "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.

Sec. 6. NEW SECTION. 637.602 TRUSTEE'S AUTHORITY TO CONVERT.

A trustee, other than an interested trustee, or, where two or more persons are acting as trustee, a majority of the trustees who are not interested trustees, may, in the trustee's sole discretion and without the approval of the court, do any of the following subject to the requirements of section 637.603:

1. Convert an income trust to a total return unitrust.
2. Reconvert a total return unitrust to an income trust.
3. Change the method used to determine the fair market value of the trust.

Sec. 7. NEW SECTION. 637.603 TRUSTEE REQUIREMENTS TO CONVERT OR CHANGE COMPUTATION METHOD.

A trustee may proceed to take action under section 637.602 if all of the following apply:

1. The trustee adopts a written policy for the trust as follows:
  - a. In the case of a trust being administered as an income trust, requiring that future distributions from the trust will be unitrust amounts rather than net income.
  - b. In the case of a trust being administered as a total return unitrust, requiring that future distributions from the trust will be net income rather than unitrust amounts.
  - c. Requiring that the method used to determine the fair market value of the trust will be changed as stated in the policy.
2. The trustee sends written notice of the trustee's intention to take any action described in subsection 1, along with copies of such written policy and this subchapter, to all of the following persons:
  - a. The trustor of the trust, if living.
  - b. All living persons who are currently receiving or eligible to receive distributions of income of the trust.
  - c. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be

eligible to receive distributions of income or principal of the trust if the persons identified in paragraph "b" were deceased.

d. All persons named in the governing instrument as adviser to or protector of the trust.

3. At least one person receiving notice under subsection 2, paragraph "b" and "c", is legally competent.

4. No person receiving such notice under subsection 2, objects, by written instrument delivered to the trustee, to the proposed action of the trustee within sixty days of receipt of such notice.

**Sec. 8. NEW SECTION. 637.604 INTERESTED TRUSTEE'S AUTHORITY TO CONVERT.**

If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in the trustee's sole discretion and without the approval of the court, do any of the following subject to the requirements of section 637.605:

1. Convert an income trust to a total return unitrust.
2. Reconvert a total return unitrust to an income trust.
3. Change the method used to determine the fair market value of the trust.

**Sec. 9. NEW SECTION. 637.605 INTERESTED TRUSTEE REQUIREMENTS TO CONVERT OR CHANGE COMPUTATION METHOD.**

An interested trustee may proceed to take action under section 637.604 if all of the following apply:

1. The trustee adopts a written policy for the trust as follows:
  - a. In the case of a trust being administered as an income trust, requiring that future distributions from the trust will be unitrust amounts rather than net income.
  - b. In the case of a trust being administered as a total return unitrust, requiring that future distributions from the trust will be net income rather than unitrust amounts.

c. Requiring that the method used to determine the fair market value of the trust will be changed as stated in the policy.

2. The trustee appoints a disinterested person who, in its sole discretion, but acting in a fiduciary capacity, determines for the trustee the method to be used in determining the fair market value of the trust, and which assets, if any, are to be excluded in determining the unitrust amount.

3. The trustee sends written notice of the trustee's intention to take any action described in subsection 1, along with copies of such written policy, this subchapter, and the determination of the disinterested person to all of the following persons:

- a. The trustor of the trust, if living.
- b. All living persons who are currently receiving or eligible to receive distributions of income of the trust.
- c. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in paragraph "b" were deceased.

d. All persons named in the governing instrument as adviser to or protector of the trust.

4. At least one person receiving notice under subsection 3, paragraphs "b" and "c", is legally competent.

5. No person receiving the notice described in subsection 3 objects, by written instrument delivered to the trustee, to the proposed action of the trustee within sixty days of receipt of such notice.

**Sec. 10. NEW SECTION. 637.606 PETITION TO COURT TO CONVERT TRUST.**

If any trustee desires to do any of the following but does not have the ability to or elects not to do so under the

provisions of section 637.602 or 637.604, the trustee may petition the court for such order as the trustee deems appropriate:

1. Convert an income trust to a total return unitrust.
2. Reconvert a total return unitrust to an income trust.
3. Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust.

If, however, there is only one trustee of such trust and such trustee is an interested trustee or in the event there are two or more trustees of such trust and a majority of them are interested trustees, the court, in its own discretion or upon the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as necessary to enable the court to make its determinations.

Sec. 11. NEW SECTION. 637.607 VALUATION OF TRUST.

The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Such assets may be excluded from valuation, provided all income received with respect to such assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

Sec. 12. NEW SECTION. 637.608 PAYOUT PERCENTAGE.

The annual unitrust payout percentage shall be four percent unless the governing instrument specifically provides a different percentage or the court approves a percentage of not less than three percent or more than five percent after notice of intent to seek a payout percentage other than four percent has been given to all of the following persons:

1. The trustor of the trust, if living.
2. All living persons who are currently receiving or eligible to receive distributions of income of the trust.

3. All living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice without regard to the exercise of any power of appointment or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in subsection 2 were deceased.

4. All persons named in the governing instrument as adviser to or protector of the trust.

Sec. 13. NEW SECTION. 637.609 UNITRUST AMOUNT.

The unitrust amount shall not be less than the net income of the trust, determined without regard to the provisions of section 637.610 for any of the following:

1. A trust for which a marital deduction has been taken for federal tax purposes under section 2056 or 2523 of the Internal Revenue Code, during the lifetime of the spouse for whom the trust was created.
2. A trust to which the generation-skipping transfer tax due under section 2601 of the Internal Revenue Code does not apply by reason of any effective date or transition rule.

Sec. 14. NEW SECTION. 637.610 PROCEDURE UPON CONVERSION OF INCOME TRUST TO TOTAL RETURN UNITRUST.

Following the conversion of an income trust to a total return unitrust, the trustee:

1. Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust.
2. Shall allocate an amount to trust income, not in excess of the annual unitrust payout amount, in the following order:
  - a. The amount derived from net income, as determined if the trust were other than a total return unitrust.
  - b. The amount derived from other ordinary income as determined for federal income tax purposes.
  - c. The amount derived from net realized short-term capital gains as determined for federal income tax purposes.

d. The amount derived from net realized long-term capital gains as determined for federal income tax purposes.

e. The amount derived from trust principal.

Sec. 15. NEW SECTION. 637.611 TOTAL RETURN UNITRUST ADMINISTRATION.

In administering a total return unitrust, the trustee may, in the trustee's sole discretion but subject to the provisions of the governing instrument, determine all of the following:

1. The effective date of the conversion.
2. The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases.
3. Whether distributions are to be made in cash or in kind or partly in cash and partly in kind.
4. If the trust is reconverted to an income trust, the effective date of such reconversion.
5. Such other administrative issues as may be necessary or appropriate to carry out the purposes of this subchapter.

Sec. 16. NEW SECTION. 637.612 PRINCIPAL DISTRIBUTIONS SUBJECT TO GOVERNING INSTRUMENT.

Conversion to a total return unitrust under the provisions of this subchapter shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

Sec. 17. NEW SECTION. 637.613 CONSTRUCTION AND APPLICABILITY.

This subchapter shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Iowa under Iowa law unless any of the following apply:

1. The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust.
2. The trust is a trust described in section 170(f)(2)(B), 664(d), 1361(d), 2702(a)(3), or 2702(b) of the Internal Revenue Code.

3. One or more persons to whom the trustee could distribute income have a power of withdrawal over the trust that is not subject to an ascertainable standard under section 2041 or 2514 of the Internal Revenue Code or that can be exercised to discharge a duty of support the person possesses.

4. The governing instrument expressly prohibits use of this subchapter by specific reference to the subchapter. A provision in the governing instrument that the provisions of sections 637.601 through 637.615 or any corresponding provision of future law shall not be used in the administration of this trust or similar words reflecting such intent shall be sufficient to preclude the use of this subchapter.

Sec. 18. NEW SECTION. 637.614 GOOD FAITH ACTIONS.

Any trustee or disinterested person who in good faith takes or fails to take any action under this subchapter shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this subchapter and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, or to reconvert a total return unitrust to an income trust.

Sec. 19. NEW SECTION. 637.615 EFFECTIVE DATE.

This subchapter takes effect upon the effective date of this Act and applies to trusts in existence on that date or created after that date.

SUBCHAPTER 7

MISCELLANEOUS PROVISIONS

Sec. 20. NEW SECTION. 637.701 APPLICATION OF CHAPTER TO EXISTING TRUSTS AND ESTATES -- CHAPTER PREVAILS.

This chapter applies to every trust or decedent's estate on and after July 1, 2000, except as otherwise expressly provided in the will, the terms of the trust, or this chapter. Notwithstanding any Code provision to the contrary, the provisions of this chapter shall prevail over any other applicable Code provision.

Sec. 21. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

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BRENT SIEGRIST  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2539, Seventy-ninth General Assembly.

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MARGARET THOMSON  
Chief Clerk of the House

Approved 4/5, 2002

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THOMAS J. VILSACK  
Governor