

FILED MAR 01 2006

SENATE FILE 2300
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3199)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the probate and trust codes.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2300

1 Section 1. Section 249A.3, subsection 11, paragraph d,
2 Code Supplement 2005, is amended to read as follows:

3 d. ~~Failure~~ Unless a surviving spouse is precluded from
4 making an election under the terms of a premarital agreement,
5 the failure of a surviving spouse to take an elective share
6 pursuant to chapter 633, division V, constitutes a transfer of
7 assets for the purpose of determining eligibility for medical
8 assistance to the extent that the value received by taking an
9 elective share would have exceeded the value of the
10 inheritance received under the will.

11 Sec. 2. Section 556.18, subsection 1, Code 2005, is
12 amended to read as follows:

13 1. Except as provided in subsection 3, all funds received
14 under this chapter, including the proceeds from the sale of
15 abandoned property under section 556.17, shall be deposited
16 quarterly by the treasurer of state in the general fund of the
17 state. However, the treasurer of state shall retain in a
18 separate trust fund a sufficient amount from which the
19 treasurer of state shall make prompt payment of claims duly
20 allowed under section 556.20. Before making the deposit, the
21 treasurer of state shall record the name and last known
22 address of each person appearing from the holders' reports to
23 be entitled to the abandoned property and the name and last
24 known address of each insured person or annuitant, and with
25 respect to each policy or contract listed in the report of a
26 life insurance corporation, its number, the name of the
27 corporation, and the amount due. The record shall be
28 available for public inspection at all reasonable business
29 hours. The treasurer of state shall provide the names and
30 social security numbers of persons entitled to abandoned
31 property pursuant to this chapter to the department of human
32 services for purposes of determining the persons' eligibility
33 for medical assistance pursuant to section 249A.3 or for the
34 reimbursement of funds pursuant to section 249A.5, but such
35 records shall be considered confidential.

1 Sec. 3. Section 556.19, Code 2005, is amended to read as
2 follows:

3 556.19 CLAIM FOR ABANDONED PROPERTY PAID OR DELIVERED.

4 Any person claiming an interest in any property delivered
5 to the state under this chapter may file a claim thereto or to
6 the proceeds from the sale thereof on the form prescribed by
7 the state treasurer. For purposes of this section, "person"
8 includes the department of human services entitled to money or
9 property of a decedent pursuant to section 249A.5.

10 Sec. 4. Section 633.246A, Code Supplement 2005, is amended
11 to read as follows:

12 633.246A MEDICAL ASSISTANCE ELIGIBILITY.

13 ~~Failure~~ Unless precluded from doing so under the terms of a
14 premarital agreement, the failure of a surviving spouse to
15 make an election under this division constitutes a transfer of
16 assets for the purpose of determining eligibility for medical
17 assistance pursuant to chapter 249A to the extent that the
18 value received by making the election would have exceeded the
19 value of property received absent the election.

20 Sec. 5. Section 633.356, subsection 8, paragraph b, Code
21 2005, is amended to read as follows:

22 b. When the department of human services is entitled to
23 money or property of a decedent pursuant to section 249A.5,
24 subsection 2, and no affidavit has been presented by a
25 successor of the decedent as defined in subsection 2, within
26 ninety days of the date of the decedent's death, the funds in
27 the account, up to the amount of the claim of the department,
28 shall be paid to the department upon presentation by the
29 department or an entity designated by the department of an
30 affidavit to the holder of the decedent's property. Such
31 affidavit shall include the information specified in
32 subsection 3, except that the department may submit proof of
33 payment of funeral expenses as verification of the decedent's
34 death instead of a certified copy of the decedent's death
35 certificate. The amount of the department's claim shall also

1 be included in the affidavit, which shall entitle the
2 department to receive the funds as a successor of the
3 decedent. The department shall issue a refund within sixty
4 days to any claimant with a superior priority pursuant to
5 section 633.425, if notice of such claim is given to the
6 department, or to the entity designated by the department to
7 receive notice, within one year of the department's receipt of
8 funds. This paragraph shall apply to accounts of the decedent
9 transferred to the custody of the treasurer of state as
10 unclaimed property pursuant to chapter 556.

11 Sec. 6. Section 633A.3102, subsection 6, Code Supplement
12 2005, is amended by striking the subsection.

13 Sec. 7. Section 633A.3103, Code Supplement 2005, is
14 amended to read as follows:

15 633A.3103 OTHER RIGHTS OF SETTLOR.

16 Except to the extent the terms of the trust otherwise
17 provide, while a trust is revocable ~~and the individual holding~~
18 ~~the power to revoke the trust is competent~~, all of the
19 following apply unless the trustee actually knows that the
20 individual holding the power to revoke the trust is not
21 competent:

22 1. The holder of the power, and not the beneficiary, has
23 the rights afforded beneficiaries.

24 2. The duties of the trustee are owed to the holder of the
25 power.

26 3. The trustee shall follow a written direction given by
27 the holder of the power, or a person to whom the power has
28 been delegated in writing, without liability for so doing, so
29 long as the action by the delegate is authorized by the trust
30 unless the trustee actually knows that the direction violates
31 the terms of the trust.

32 Sec. 8. Section 633A.3104, Code Supplement 2005, is
33 amended to read as follows:

34 633A.3104 ~~CREDITOR CLAIMS~~ CLAIMS AGAINST REVOCABLE TRUST.

35 1. During the lifetime of the settlor, the trust property

1 of a revocable trust is subject to the claims debts of the
2 settlor's-creditors settlor to the extent of the settlor's
3 power of revocation.

4 2. Following the death of a settlor, the property of a
5 revocable trust subject to the settlor's power of revocation
6 at the time of death is subject to the claims debts of the
7 settlor's-creditors settlor and costs-of-administration
8 charges of the settlor's estate to the extent of the value of
9 the property over which the settlor had a power of revocation,
10 if the settlor's estate is inadequate to satisfy those claims
11 debts and costs charges.

12 3. If a revocable trust becomes subject to the debts of a
13 settlor and the charges of the settlor's estate pursuant to
14 this section, following the payment of the proper costs of
15 administration of the trust and any claims against the trust,
16 the debts and charges of the settlor's estate payable by the
17 trust shall be classified pursuant to sections 633.425 and
18 633.426 as such sections exist on the date of the settlor's
19 death and paid in the order listed therein to the extent the
20 settlor's estate is inadequate to satisfy the listed debts and
21 charges.

22 Sec. 9. Section 633A.3105, subsection 2, Code Supplement
23 2005, is amended to read as follows:

24 2. Property in trust subject to a presently exercisable
25 general power of appointment is chargeable with the claims
26 debts of the holder's-creditors holder and costs-of
27 administration charges of the holder's estate to the same
28 extent as if the holder was a settlor and the power of
29 appointment was a power of revocation.

30 Sec. 10. Section 633A.3109, Code Supplement 2005, is
31 amended to read as follows:

32 633A.3109 NOTICE TO CREDITORS, CLAIMANTS, HEIRS, SPOUSE,
33 AND BENEFICIARIES.

34 1. As used in this section, "heir" means only such person
35 as who would, in an intestate estate, be entitled to a share

1 under section 633.219.

2 2. ~~A creditor of a deceased settlor of a revocable trust~~
3 ~~must bring suit to enforce its claim against the assets of the~~
4 ~~decedent's trust within one year of the decedent's death or be~~
5 ~~forever barred from collection against the trust assets.~~ If
6 the notice provided for in subsection 3 has not been published
7 and if a probate administration is commenced for the decedent
8 within one year of the decedent's date of death and notice is
9 properly given pursuant to section 633.230 or 633.304, a
10 creditor's rights shall be determined under those sections and
11 section 633A.3104.

12 3. ~~If no notice is given to creditors and heirs pursuant~~
13 ~~to subsection 2, a creditor's rights may~~ Except as provided in
14 subsections 2 and 4, the rights of creditors against assets of
15 the trust and those of heirs to contest the trust shall be
16 established or terminated if by the trustee gives giving
17 notice as follows:

18 a. The trustee shall publish a notice once each week for
19 two consecutive weeks in a daily or weekly newspaper of
20 general circulation published in the county in which the
21 decedent was a resident at the time of death, and in any
22 county of which the decedent was a nonresident but in which
23 some real estate of the trust is located. If the decedent was
24 not a resident of Iowa, but the principal place of
25 administration is in Iowa, the trustee shall publish notice in
26 the county that is the principal place of administration
27 pursuant to section 633A.6102.

28 b. ~~If at any time during the pendency of the trust~~
29 ~~administration the trustee has knowledge of the name and~~
30 ~~address of a person believed to own or possess a claim which~~
31 ~~will not, or may not, be paid or otherwise satisfied during~~
32 ~~administration, the trustee shall provide a notice by ordinary~~
33 ~~mail to each such claimant at the claimant's last known~~
34 ~~address.~~ As soon as practicable, the trustee shall give
35 notice by ordinary mail to the surviving spouse, the heirs of

1 the decedent, and each beneficiary under the trust whose
2 identities are reasonably ascertainable, at such person's last
3 known address.

4 ~~c. As soon as practicable, the trustee shall give a notice~~
5 ~~by ordinary mail to the surviving spouse, the heirs of the~~
6 ~~decedent, and each beneficiary under the trust whose~~
7 ~~identities are reasonably ascertainable, at such persons' last~~
8 ~~known addresses. If at any time during the pendency of the~~
9 ~~trust administration the trustee has knowledge of the name and~~
10 ~~address of a person believed to own or possess a claim which~~
11 ~~will not, or may not, be paid or otherwise satisfied during~~
12 ~~administration, the trustee shall provide a notice by ordinary~~
13 ~~mail to each such creditor at the creditor's last known~~
14 ~~address stating the decedent settlor's date of death and that~~
15 ~~the claim shall be forever barred unless proof of the~~
16 ~~creditor's claim is mailed to the trustee by certified mail,~~
17 ~~return receipt requested, within the later to occur of sixty~~
18 ~~days from the second publication of notice or thirty days from~~
19 ~~the date of mailing of the notice.~~

20 d. The notice in paragraphs "a", and "b", and "c" shall
21 include notification of the decedent's death, and the fact
22 that any action to contest the validity of the trust must be
23 brought within the later to occur of sixty days from the date
24 of the second publication of the notice made pursuant to
25 paragraph "a" or thirty days from the date of mailing of the
26 notice pursuant to paragraph "b" ~~or "c"~~ and that any claim
27 against the trust assets will be forever barred unless proof
28 of a creditor's claim is mailed to the trustee by certified
29 mail, return receipt requested, within the later to occur of
30 sixty days from the second publication of notice or thirty
31 days from the date of mailing the notice, if required. A
32 person who does not make a claim within the appropriate period
33 is forever barred.

34 ~~e. The trustee shall give notice to debtors to make~~
35 ~~payment, and to creditors having claims against the trust~~

~~1 assets-to-mail-proof-of-their-claim-to-the-trustee-via
2 certified-mail, return receipt requested, within the later to
3 occur of sixty days from the second publication of the notice
4 or thirty days from the date of mailing of the notice, or
5 thereafter be forever barred.~~

6 4. If notice has not been published or given as provided
7 in subsection 2 or 3, a claimant of a deceased settlor of a
8 revocable trust must bring suit to enforce the creditor's
9 claim against the assets of the decedent's trust within one
10 year of the decedent's death or be forever barred from
11 collecting against the trust assets unless the trustee has
12 failed to comply with subsection 3, paragraph "c". The one-
13 year limitation period shall not be extended by the
14 commencement of probate administration for the settlor more
15 than one year following the settlor's death.

16 ~~4-~~ 5. The notice described in subsection 3 shall be
17 substantially in the following form:

18 To all persons regarding, deceased, who died on or
19 about, (year) You are hereby notified that is
20 the trustee of the Trust. At this time, no probate
21 administration is contemplated with regard to the above-
22 referenced decedent's estate.

23 Any action to contest the validity of the trust must be
24 brought in the District Court of County, Iowa, within the
25 later to occur of sixty days from the date of second
26 publication of this notice, or thirty days from the date of
27 mailing this notice to all heirs of the decedent, spouse of
28 the decedent, and beneficiaries under the trust whose
29 identities are reasonably ascertainable. Any claim suit not
30 filed within this period shall be forever barred.

31 Notice is further given that ~~all persons indebted to the~~
32 ~~decedent or to the trust are requested to make immediate~~
33 ~~payment to the undersigned trustee.--Creditors having claims~~
34 any person or entity possessing a claim against the trust must
35 mail them proof of the claim to the trustee at the address

1 listed below via certified mail, return receipt requested-
2 ~~Unless-creditor-claims-are-mailed~~ by the later to occur of
3 sixty days from the second publication of this notice or
4 thirty days from the date of mailing this notice, a if
5 required, or the claim shall be forever barred, unless
6 otherwise-allowed-or paid or otherwise satisfied.

7 Dated this .. day of, (year) ...
8 Trust
9
10 Trustee
11 Address:
12

13 Date of second publication .. day of ...,
14 (year) ...

15 6. The proof of claim must be in writing stating the
16 party's name and address and describing the nature and amount
17 of the claim and, if ascertainable, accompanied by an
18 affidavit of the party or a representative of the party
19 verifying the amount that is due, or when the amount will
20 become due, that no payments have been made on the claim that
21 are not credited, and that no offsets to the claim exist.

22 7. At any time after receipt by the trustee of a proof of
23 claim, the trustee may give the party submitting the claim a
24 written notice of disallowance of the claim. The notice shall
25 be given by certified mail, return receipt requested,
26 addressed to the party at the address stated in the claim, and
27 to the attorney of record of the party submitting the claim.
28 Such notice of disallowance shall advise the party submitting
29 the claim that the claim has been disallowed and will be
30 forever barred unless suit is filed against the trustee to
31 enforce the claim within thirty days of the date of the
32 mailing of the notice of disallowance. If suit is filed, the
33 provisions in chapter 633 relating to actions to enforce a
34 claim shall apply with the trust and trustee substituted for
35 the estate and personal representative.

1 5- 8. ~~The claimant either must receive satisfaction of~~
2 ~~its claim, or must file suit against the trust to enforce~~
3 ~~collection of the creditor's claim within sixty days of~~
4 ~~mailing its claim to the trustee.~~ The trustee and creditor
5 may agree to extend the limitations period for filing an
6 action to enforce the claim. If the claimant creditor fails
7 to properly file its claim within the established time period
8 or bring an action to enforce its claim within the established
9 time period, the creditor's claim shall be forever barred.

10 Sec. 11. Section 633A.3111, Code Supplement 2005, is
11 amended to read as follows:

12 633A.3111 TRUSTEE'S LIABILITY FOR DISTRIBUTIONS.

13 1. A trustee who distributes trust assets without making
14 adequate provisions for the payment of creditor-claims debts
15 and charges that are known or reasonably ascertainable at the
16 time of the distribution shall be jointly and severally liable
17 with the beneficiaries to the extent of the distributions
18 made.

19 2. A trustee shall be entitled to indemnification from the
20 beneficiaries for all amounts paid to-creditors for debts and
21 charges under this section, to the extent of distributions
22 made.

23 Sec. 12. Section 633A.3112, Code Supplement 2005, is
24 amended by striking the section and inserting in lieu thereof
25 the following:

26 633A.3112 DEFINITIONS -- REVOCABLE TRUSTS.

27 As used in this subchapter:

28 1. "Charges" includes costs of administration, funeral
29 expenses, costs of monuments, and federal and state estate
30 taxes.

31 2. "Claimant" includes any interested party who possesses
32 any legal claim to trust property, the settlor's spouse, the
33 settlor's heirs as defined in section 633A.3109, and any other
34 person or entity with standing to challenge the trust, a
35 creditor of the settlor, and a personal representative of the

1 settlor's estate.

2 3. "Debts" includes liabilities of the settlor owed at
3 death that survive the settlor's death, whether arising in
4 contract, tort, or otherwise.

5 Sec. 13. Section 633A.4207, subsection 2, Code Supplement
6 2005, is amended to read as follows:

7 2. If the terms of the trust confer upon a person other
8 than the settlor of a revocable trust power to direct certain
9 actions of the trustee, the trustee shall act in accordance
10 with an exercise of the power unless the trustee knows the
11 attempted exercise violates the terms of the trust or the
12 trustee knows that the person holding the power is incompetent
13 not competent.

14 Sec. 14. Section 633A.4213, unnumbered paragraph 1, Code
15 Supplement 2005, is amended to read as follows:

16 A trustee of an irrevocable trust shall keep the qualified
17 beneficiaries of the trust reasonably informed about the
18 administration of the trust and the material facts necessary
19 to protect the beneficiaries' interests.

20 Sec. 15. Section 633A.4213, subsections 3 and 4, Code
21 Supplement 2005, are amended to read as follows:

22 3. A Except as provided in subsection 4, a trustee of an
23 irrevocable trust shall provide annually to each adult
24 beneficiary and the representative of any minor or incompetent
25 beneficiary who may receive a distribution of income or
26 principal during the accounting time period, an accounting,
27 unless an accounting has been waived specifically for that
28 accounting time period.

29 4. ~~This section does not apply to any trust where the~~
30 ~~grantor~~ If a settlor has retained the right, ~~or has~~
31 ~~transferred the right,~~ to change the beneficiaries of the
32 trust or if a party is the holder of a presently exercisable
33 general power of appointment, the trustee shall only be
34 required to report to the settlor or the party.

35 Sec. 16. NEW SECTION. 633A.4707 PERSON CAUSING DEATH.

1 A person who intentionally and unjustifiably causes or
2 procures the death of another shall not receive any property,
3 benefit, or other interest as a beneficiary of a trust by
4 reason of such death. Any property, benefit, or other
5 interest that such person would have received because of such
6 death shall be distributed as if the person causing the death
7 died before the person whose death was intentionally and
8 unjustifiably caused or procured.

9 Sec. 17. Section 633A.6301, Code Supplement 2005, is
10 amended by adding the following new subsection:

11 NEW SUBSECTION. 5. A settlor shall not represent and bind
12 a beneficiary under this trust code with respect to the
13 termination or modification of a trust pursuant to section
14 633A.2202 or 633A.2203.

15 EXPLANATION

16 This bill relates to the probate and trust codes.

17 The bill amends provisions in the eligibility requirements
18 for medical assistance pursuant to Code chapter 249A and
19 provides that unless a surviving spouse who applies for
20 medical assistance has a premarital agreement that
21 specifically precludes the surviving spouse from taking the
22 decedent spouse's elective share, the failure of a surviving
23 spouse to take an elective share constitutes a transfer of
24 assets for purposes of determining eligibility for medical
25 assistance under Code chapter 249A.

26 The bill provides that the treasurer of state shall report
27 to the department of human services the names and social
28 security numbers of persons entitled to unclaimed property
29 under the uniform disposition of unclaimed property Act
30 pursuant to Code chapter 556. The bill provides that such a
31 report shall be confidential.

32 The bill authorizes the department of human services to
33 claim and receive assets of decedents under the treasurer of
34 state's unclaimed property program.

35 The bill eliminates language relating to the court's

1 approval of a conservator's duties in regard to the revocation
2 or modification of a trust.

3 The bill specifies that unless the trustee actually knows
4 that a person holding a power to revoke the trust is not
5 competent, the holder of the power has rights afforded the
6 beneficiary, the duties of the trustee are owed to the holder
7 of the power, and the trustee shall follow a written direction
8 given by the holder of the power without liability for doing
9 so, as long as the action is authorized by the trust.

10 The bill adds the terms "debts" and "charges" to sections
11 of the Code referring to the obligations of a trust and a
12 deceased settlor that can be recovered from the settlor's
13 revocable trust. The terms are also added for purposes of
14 classification and order of payment of debts and charges
15 against a settlor's estate. The bill provides definitions of
16 such terms.

17 The bill includes specific notice and claim provisions
18 affecting creditors asserting claims against revocable trust
19 assets and specifies which notice provision applies to a
20 particular creditor and under what circumstances a creditor's
21 claims will be barred. The changes also specify how a
22 creditor must provide notice to a trustee of a claim, the
23 procedure for a trustee to deny a claim, the time limit for a
24 creditor to contest a denial of a claim, and how the one-year
25 statute of limitations affects a creditor who asserts a claim
26 against the assets of a trust.

27 The bill specifies that if the terms of the trust give a
28 person other than the settlor of a revocable trust power to
29 direct certain actions of the trustee, the trustee shall act
30 in accordance with an exercise of the power unless the trustee
31 knows the attempted exercise violates the terms of the trust
32 or the trustee knows that the person holding the power is not
33 competent.

34 The bill specifies that a trustee's duty to keep the
35 beneficiaries of the trust informed about the administration

1 of the trust and material facts necessary to protect the
2 beneficiaries' interests applies to an irrevocable trust. The
3 bill also specifies persons to whom the trustee shall send the
4 trustee's report for trusts in which a settlor has retained
5 the right to change a beneficiary or where a person is a
6 holder of a presently exercisable general power of
7 appointment.

8 The bill provides that a person who intentionally and
9 unjustifiably causes or procures the death of another shall
10 not receive any property, benefit, or other interest as a
11 beneficiary of a trust by reason of such death. Any property,
12 benefit, or other interest that such person would have
13 received because of such death shall be distributed as if the
14 person causing the death died before the person whose death
15 was intentionally and unjustifiably caused or provoked.

16 The bill provides that a settlor shall not represent and
17 bind a beneficiary under this trust code with respect to the
18 termination or modification of a trust.

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SENATE FILE 2300

S-5036

- 1 Amend Senate File 2300 as follows:
2 1. Page 4, by striking lines 5 and 6 and
3 inserting the following: "revocable trust ~~subject to~~
4 ~~the settlor's power of revocation at the time of death~~
5 is subject to the ~~claims~~ debts of the".
6 2. Page 7, line 8, by striking the words "the
7 creditor's" and inserting the following: "its".
8 3. Page 8, by striking line 17 and inserting the
9 following: "of the claim, if ascertainable, and
10 accompanied by an".
11 4. Page 11, by inserting after line 14 the
12 following:
13 "Sec. ____ . APPLICABILITY DATES.
14 1. The section of this Act amending section
15 633A.3109 shall apply to trusts of settlors who die on
16 or after July 1, 2006.
17 2. The sections of this Act amending section
18 633A.4213 shall apply to trust accounting periods
19 ending on or after July 1, 2006.
20 3. The section of this Act creating section
21 633A.4707 shall apply to property, benefit, or other
22 trust interests distributed on or after July 1, 2006.
23 4. The section of this Act amending section
24 633A.6301 shall apply to trust terminations or
25 modifications completed on or after July 1, 2006."
26 5. Title page, line 1, by inserting after the
27 word "codes" the following: "and providing
28 applicability date provisions".
29 6. By renumbering as necessary.

By EUGENE S. FRAISE

S-5036 FILED MARCH 8, 2006

SENATE FILE 2300

S-5049

- 1 Amend Senate File 2300 as follows:
2 1. By striking page 1, line 11, through page 2,
3 line 9.
4 2. By striking page 2, line 20, through page 3,
5 line 10.
6 3. By renumbering as necessary.

By EUGENE S. FRAISE

S-5049 FILED MARCH 13, 2006

SENATE FILE 2300

S-5155

- 1 Amend Senate File 2300 as follows:
2 1. Page 3, line 8, by striking the word
3 "accounts" and inserting the following: "property".
4 2. Page 4, by striking lines 5 and 6 and
5 inserting the following: "revocable trust ~~subject to~~
6 ~~the settlor's power of revocation at the time of death~~
7 is subject to the ~~claims~~ debts of the".
8 3. Page 7, line 8, by striking the words "the
9 creditor's" and inserting the following: "its".
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21 ending on or after July 1, 2006.
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23 633A.4707 shall apply to property, benefit, or other
24 trust interests distributed on or after July 1, 2006.
25 4. The section of this Act amending section
26 633A.6301 shall apply to trust terminations or
27 modifications completed on or after July 1, 2006."
28 6. Title page, line 1, by inserting after the
29 word "codes" the following: "and providing
30 applicability date provisions".
31 7. By renumbering as necessary.

By EUGENE S. FRAISE

S-5155 FILED APRIL 4, 2006

Fraise Co-chair
Boettger Co-chair
Horn
Larson

Succeeded By
SF / HF 2300

SSB# 3199
Judiciary

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CO-CHAIRPERSONS KREIMAN
AND MILLER)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the probate and trust codes.

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

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4 making an election under the terms of a premarital agreement,
5 the failure of a surviving spouse to take an elective share
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7 assets for the purpose of determining eligibility for medical
8 assistance to the extent that the value received by taking an
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12 amended to read as follows:

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14 under this chapter, including the proceeds from the sale of
15 abandoned property under section 556.17, shall be deposited
16 quarterly by the treasurer of state in the general fund of the
17 state. However, the treasurer of state shall retain in a
18 separate trust fund a sufficient amount from which the
19 treasurer of state shall make prompt payment of claims duly
20 allowed under section 556.20. Before making the deposit, the
21 treasurer of state shall record the name and last known
22 address of each person appearing from the holders' reports to
23 be entitled to the abandoned property and the name and last
24 known address of each insured person or annuitant, and with
25 respect to each policy or contract listed in the report of a
26 life insurance corporation, its number, the name of the
27 corporation, and the amount due. The record shall be
28 available for public inspection at all reasonable business
29 hours. The treasurer of state shall provide the name and
30 social security number of a person entitled to abandoned
31 property pursuant to this chapter to the department of human
32 services for purposes of determining the person's eligibility
33 for medical assistance pursuant to section 249A.3 or for the
34 reimbursement of funds pursuant to section 249A.5, but such
35 records shall be considered confidential.

1 Sec. 3. Section 556.19, Code 2005, is amended to read as
2 follows:

3 556.19 CLAIM FOR ABANDONED PROPERTY PAID OR DELIVERED.

4 Any person claiming an interest in any property delivered
5 to the state under this chapter may file a claim thereto or to
6 the proceeds from the sale thereof on the form prescribed by
7 the state treasurer. For purposes of this section, "person"
8 includes the department of human services entitled to money or
9 property of a decedent pursuant to section 249A.5.

10 Sec. 4. Section 633.237, Code Supplement 2005, is amended
11 to read as follows:

12 633.237 PRESUMPTION AGAINST FILING ELECTIVE SHARE.

13 1. The surviving spouse, or the surviving spouse's
14 conservator, may voluntarily elect to take the testamentary or
15 intestate share or elective share pursuant to this section.

16 2. If a voluntary election has not been filed within one
17 month of the date of the second publication of notice of
18 appointment of the personal representative or of the notice of
19 trust, and the surviving spouse is not a personal
20 representative or the trustee, all of the following shall
21 apply:

22 1- a. Following the appointment of a personal
23 representative of the estate of the decedent, who is not the
24 spouse, the personal representative shall cause to be served a
25 written notice upon the surviving spouse pursuant to section
26 633.40, subsection 5, notifying the surviving spouse that
27 unless, within four months after service of the notice, the
28 spouse files an election in writing with the clerk of court
29 electing the share as set forth in section 633.236 and
30 sections 633.238 through 633.246, the spouse shall be deemed
31 to take under the will or to receive the intestate share. If,
32 within the four-month period following service of the notice,
33 an affidavit is filed setting forth that the surviving spouse
34 is incapable of making the election and does not have a
35 conservator, the personal representative shall make

1 application to the court for an order pursuant to section
2 633.244.

3 2- b. Following the death of a settlor of a revocable
4 trust, the trustee of such revocable trust who is not the
5 spouse shall cause to be served a written notice upon the
6 surviving spouse pursuant to section 633.40, subsection 5,
7 notifying the surviving spouse that unless, within four months
8 after service of the notice, the spouse files an election with
9 the trustee electing the share as set forth in section 633.236
10 and sections 633.238 through 633.246, the spouse shall be
11 deemed to take under the terms of the revocable trust. If,
12 within the four-month period following service of the notice,
13 an affidavit is filed setting forth that the surviving spouse
14 is incapable of making the election and does not have a
15 conservator, the trustee shall make application to the court
16 for an order pursuant to section 633.244.

17 3- c. If the surviving spouse has a conservator, notice
18 shall be given to the conservator and the spouse pursuant to
19 subsections 1 and 2.

20 4- d. The notice provisions under subsections 1 and 2 are
21 not applicable if the surviving spouse is a personal
22 representative of the estate or a trustee of a revocable
23 trust. If the surviving spouse fails to file an election
24 under this section within four months of the decedent's death,
25 it shall be conclusively presumed that the surviving spouse
26 elects to take under the will, receive the intestate share, or
27 take under the revocable trust.

28 5- e. Upon application of the surviving spouse or the
29 spouse's conservator filed before the time for making the
30 election expires, the court may extend the period in which the
31 surviving spouse may make the election.

32 Sec. 5. Section 633.246A, Code Supplement 2005, is amended
33 to read as follows:

34 633.246A MEDICAL ASSISTANCE ELIGIBILITY.

35 Failure Unless precluded from doing so under the terms of a

1 premarital agreement, the failure of a surviving spouse to
2 make an election under this division constitutes a transfer of
3 assets for the purpose of determining eligibility for medical
4 assistance pursuant to chapter 249A to the extent that the
5 value received by making the election would have exceeded the
6 value of property received absent the election.

7 Sec. 6. Section 633.356, subsection 8, paragraph b, Code
8 2005, is amended to read as follows:

9 b. When the department of human services is entitled to
10 money or property of a decedent pursuant to section 249A.5,
11 subsection 2, and no affidavit has been presented by a
12 successor of the decedent as defined in subsection 2, within
13 ninety days of the date of the decedent's death, the funds in
14 the account, up to the amount of the claim of the department,
15 shall be paid to the department upon presentation by the
16 department or an entity designated by the department of an
17 affidavit to the holder of the decedent's property. Such
18 affidavit shall include the information specified in
19 subsection 3, except that the department may submit proof of
20 payment of funeral expenses as verification of the decedent's
21 death instead of a certified copy of the decedent's death
22 certificate. The amount of the department's claim shall also
23 be included in the affidavit, which shall entitle the
24 department to receive the funds as a successor of the
25 decedent. The department shall issue a refund within sixty
26 days to any claimant with a superior priority pursuant to
27 section 633.425, if notice of such claim is given to the
28 department, or to the entity designated by the department to
29 receive notice, within one year of the department's receipt of
30 funds. This paragraph shall apply to accounts of the decedent
31 transferred to the custody of the treasurer of state as
32 unclaimed property pursuant to chapter 556.

33 Sec. 7. Section 633A.3102, subsection 6, Code Supplement
34 2005, is amended by striking the subsection.

35 Sec. 8. Section 633A.3103, Code Supplement 2005, is

1 amended to read as follows:

2 633A.3103 OTHER RIGHTS OF SETTLOR.

3 Except to the extent the terms of the trust otherwise
4 provide, while a trust is revocable ~~and the individual holding~~
5 ~~the power to revoke the trust is competent~~, all of the
6 following apply unless the trustee has actual knowledge that
7 the individual holding the power to revoke the trust is not
8 competent:

9 1. The holder of the power, and not the beneficiary, has
10 the rights afforded beneficiaries.

11 2. The duties of the trustee are owed to the holder of the
12 power.

13 3. The trustee shall follow a written direction given by
14 the holder of the power, or a person to whom the power has
15 been delegated in writing, without liability for so doing, so
16 long as the action by the delegate is authorized by the trust
17 unless the trustee has actual knowledge that the direction
18 violates the terms of the trust.

19 Sec. 9. Section 633A.3104, Code Supplement 2005, is
20 amended to read as follows:

21 633A.3104 ~~CREDITOR-CLAIMS~~ CLAIMS AGAINST REVOCABLE TRUST.

22 1. During the lifetime of the settlor, the trust property
23 of a revocable trust is subject to the ~~claims~~ debts of the
24 ~~settlor's-creditors~~ settlor to the extent of the settlor's
25 power of revocation.

26 2. Following the death of a settlor, the property of a
27 revocable trust subject to the settlor's power of revocation
28 at the time of death is subject to the ~~claims~~ debts of the
29 ~~settlor's-creditors~~ settlor and ~~costs-of-administration~~
30 charges of the settlor's estate to the extent of the value of
31 the property over which the settlor had a power of revocation,
32 if the settlor's estate is inadequate to satisfy those ~~claims~~
33 debts and costs charges.

34 3. If a revocable trust becomes subject to the debts of a
35 settlor and the charges of the settlor's estate pursuant to

1 this section, following the payment of the proper costs of
2 administration of the trust and any claims against the trust,
3 the debts and charges of the settlor's estate payable by the
4 trust shall be classified pursuant to sections 633.425 and
5 633.426 as such sections exist on the date of the settlor's
6 death and paid in the order listed therein to the extent the
7 settlor's estate is inadequate to satisfy the listed debts and
8 charges.

9 Sec. 10. Section 633A.3105, subsection 2, Code Supplement
10 2005, is amended to read as follows:

11 2. Property in trust subject to a presently exercisable
12 general power of appointment is chargeable with the ~~claims~~
13 ~~debts of the holder's-creditors holder and costs-of~~
14 ~~administration charges~~ of the holder's estate to the same
15 extent as if the holder was a settlor and the power of
16 appointment was a power of revocation.

17 Sec. 11. Section 633A.3109, Code Supplement 2005, is
18 amended to read as follows:

19 633A.3109 NOTICE TO CREDITORS, CLAIMANTS, HEIRS, SPOUSE,
20 AND BENEFICIARIES.

21 1. As used in this section, "heir" means only such person
22 as who would, in an intestate estate, be entitled to a share
23 under section 633.219.

24 2. ~~A-creditor-of-a-deceased-settlor-of-a-revocable-trust~~
25 ~~must-bring-suit-to-enforce-its-claim-against-the-assets-of-the~~
26 ~~decedent's-trust-within-one-year-of-the-decedent's-death-or-be~~
27 ~~forever-barred-from-collection-against-the-trust-assets.~~ If
28 the notice provided for in subsection 3 has not been published
29 and if a probate administration is commenced for the decedent
30 within one year of the decedent's date of death and notice is
31 properly given pursuant to section 633.230 or 633.304, a
32 creditor's rights shall be determined under those sections and
33 section 633A.3104.

34 3. ~~If-no-notice-is-given-to-creditors-and-heirs-pursuant~~
35 ~~to-subsection-2,-a-creditor's-rights-may~~ Except as provided in

1 subsections 2 and 4, the rights of creditors against assets of
2 the trust and those of heirs to contest the trust shall be
3 established or terminated if by the trustee gives giving
4 notice as follows:

5 a. The trustee shall publish a notice once each week for
6 two consecutive weeks in a daily or weekly newspaper of
7 general circulation published in the county in which the
8 decedent was a resident at the time of death, and in any
9 county of which the decedent was a nonresident but in which
10 some real estate of the trust is located. If the decedent was
11 not a resident of Iowa, but the principal place of
12 administration is in Iowa, the trustee shall publish notice in
13 the county that is the principal place of administration
14 pursuant to section 633A.6102.

15 ~~b. If-at-any-time-during-the-pendency-of-the-trust~~
16 ~~administration-the-trustee-has-knowledge-of-the-name-and~~
17 ~~address-of-a-person-believed-to-own-or-possess-a-claim-which~~
18 ~~will-not-or-may-not-be-paid-or-otherwise-satisfied-during~~
19 ~~administration-the-trustee-shall-provide-a-notice-by-ordinary~~
20 ~~mail-to-each-such-claimant-at-the-claimant's-last-known~~
21 ~~address.~~ As soon as practicable, the trustee shall give
22 notice by ordinary mail to the surviving spouse, the heirs of
23 the decedent, and each beneficiary under the trust whose
24 identities are reasonably ascertainable, at such person's last
25 known address.

26 ~~c. As-soon-as-practicable-the-trustee-shall-give-a-notice~~
27 ~~by-ordinary-mail-to-the-surviving-spouse-the-heirs-of-the~~
28 ~~decedent-and-each-beneficiary-under-the-trust-whose~~
29 ~~identities-are-reasonably-ascertainable-at-such-persons'-last~~
30 ~~known-addresses.~~ If at any time during the pendency of the
31 trust administration the trustee has knowledge of the name and
32 address of a person believed to own or possess a claim which
33 will not, or may not, be paid or otherwise satisfied during
34 administration, the trustee shall provide a notice by ordinary
35 mail to each such creditor at the creditor's last known

1 address stating the decedent settlor's date of death and that
 2 the claim shall be forever barred unless proof of the
 3 creditor's claim is mailed to the trustee by certified mail,
 4 return receipt requested, within the later to occur of sixty
 5 days from the second publication of notice or thirty days from
 6 the date of mailing of the notice.

7 d. The notice in paragraphs "a", ~~and "b", and "c"~~ shall
 8 include notification of the decedent's death, and the fact
 9 that any action to contest the validity of the trust must be
 10 brought within the later to occur of sixty days from the date
 11 of the second publication of the notice made pursuant to
 12 paragraph "a" or thirty days from the date of mailing of the
 13 notice pursuant to paragraph "b" ~~or "c"~~ and that any claim
 14 against the trust assets will be forever barred unless proof
 15 of a creditor's claim is mailed to the trustee by certified
 16 mail, return receipt requested, within the later to occur of
 17 sixty days from the second publication of notice or thirty
 18 days from the date of mailing the notice, if required. A
 19 person who does not make a claim within the appropriate period
 20 is forever barred.

21 ~~e. --The trustee shall give notice to debtors to make~~
 22 ~~payment, and to creditors having claims against the trust~~
 23 ~~assets to mail proof of their claim to the trustee via~~
 24 ~~certified mail, return receipt requested, within the later to~~
 25 ~~occur of sixty days from the second publication of the notice~~
 26 ~~or thirty days from the date of mailing of the notice, or~~
 27 ~~thereafter be forever barred.~~

28 4. If notice has not been published or given as provided
 29 in subsection 2 or 3, a creditor of a deceased settlor of a
 30 revocable trust must bring suit to enforce the creditor's
 31 claim against the assets of the decedent's trust within one
 32 year of the decedent's death or be forever barred from
 33 collecting against the trust assets unless the trustee has
 34 failed to comply with subsection 3, paragraph "c". The one-
 35 year limitation period shall not be extended by the

1 commencement of probate administration for the settlor more
2 than one year following the settlor's death.

3 4- 5. The notice described in subsection 3 shall be
4 substantially in the following form:

5 To all persons regarding, deceased, who died on or
6 about, (year) You are hereby notified that is
7 the trustee of the Trust. At this time, no probate
8 administration is contemplated with regard to the above-
9 referenced decedent's estate.

10 Any action to contest the validity of the trust must be
11 brought in the District Court of County, Iowa, within the
12 later to occur of sixty days from the date of second
13 publication of this notice, or thirty days from the date of
14 mailing this notice to all heirs of the decedent, spouse of
15 the decedent, and beneficiaries under the trust whose
16 identities are reasonably ascertainable. Any claim suit not
17 filed within this period shall be forever barred.

18 Notice is further given that ~~all persons indebted to the~~
19 ~~decedent or to the trust are requested to make immediate~~
20 ~~payment to the undersigned trustee. Creditors having claims~~
21 any person or entity possessing a claim against the trust must
22 mail them proof of the claim to the trustee at the address
23 listed below via certified mail, return receipt requested.
24 ~~Unless creditor claims are mailed~~ by the later to occur of
25 sixty days from the second publication of this notice or
26 thirty days from the date of mailing this notice, a if
27 required, or the claim shall be forever barred, unless
28 otherwise allowed or paid or otherwise satisfied.

29 Dated this .. day of, (year) ...
30 Trust

31
32 Trustee
33 Address:
34

35 Date of second publication .. day of

1 (year) ...

2 6. The proof of claim must be in writing stating the
3 party's name and address and describing the nature and amount
4 of the claim and, if appropriate, accompanied by an affidavit
5 of the party or a representative of the party verifying the
6 amount that is due, or when the amount will become due, and
7 that no payments have been made on the claim that are not
8 credited, and that no offsets to the claim exist.

9 7. At any time after receipt by the trustee of a proof of
10 claim, the trustee may give the party submitting the claim a
11 written notice of disallowance of the claim. The notice shall
12 be given by certified mail, return receipt requested,
13 addressed to the party at the address stated in the claim, and
14 to the attorney of record of the party submitting the claim.
15 Such notice of disallowance shall advise the party submitting
16 the claim that the claim has been disallowed and will be
17 forever barred unless suit is filed against the trustee to
18 enforce the claim within thirty days of the date of the
19 mailing of the notice of disallowance. If suit is filed, the
20 provisions in chapter 633 relating to actions to enforce a
21 claim shall apply.

22 ~~5. 8. The claimant either must receive satisfaction of~~
23 ~~its claim, or must file suit against the trust to enforce~~
24 ~~collection of the creditor's claim within sixty days of~~
25 ~~mailing its claim to the trustee. The trustee and creditor~~
26 ~~may agree to extend the limitations period for filing an~~
27 ~~action to enforce the claim. If the claimant creditor fails~~
28 ~~to properly file its claim within the established time period~~
29 ~~or bring an action to enforce its claim within the established~~
30 ~~time period, the creditor's claim shall be forever barred.~~

31 Sec. 12. Section 633A.3111, Code Supplement 2005, is
32 amended to read as follows:

33 633A.3111 TRUSTEE'S LIABILITY FOR DISTRIBUTIONS.

34 1. A trustee who distributes trust assets without making
35 adequate provisions for the payment of ~~creditor-claims~~ debts

1 and charges that are known or reasonably ascertainable at the
2 time of distribution shall be jointly and severally liable
3 with the beneficiaries to the extent of the distributions
4 made.

5 2. A trustee shall be entitled to indemnification from the
6 beneficiaries for all amounts paid ~~to-creditors~~ for debts and
7 charges under this section, to the extent of distributions
8 made.

9 Sec. 13. Section 633A.3112, Code Supplement 2005, is
10 amended by striking the section and inserting in lieu thereof
11 the following:

12 633A.3112 DEFINITIONS -- REVOCABLE TRUSTS.

13 As used in this subchapter:

14 1. "Charges" includes costs of administration, funeral
15 expenses including costs of monuments, and federal and state
16 estate taxes.

17 2. "Claimant" includes any interested party who possesses
18 any legal claim to trust property, the settlor's spouse, the
19 settlor's heirs as defined in section 633A.3109, and any other
20 person or entity with standing to challenge the trust,
21 including a creditor of the settlor and a personal
22 representative of the settlor's estate.

23 3. "Debts" includes liabilities of the settlor owed at
24 death that survive the settlor's death, whether arising in
25 contract, tort, or otherwise.

26 Sec. 14. Section 633A.4207, subsection 2, Code Supplement
27 2005, is amended to read as follows:

28 2. If the terms of the trust confer upon a person other
29 than the settlor of a revocable trust power to direct certain
30 actions of the trustee, the trustee shall act in accordance
31 with an exercise of the power unless the trustee knows the
32 attempted exercise violates the terms of the trust or the
33 trustee knows that the person holding the power is ~~incompetent~~
34 not competent.

35 Sec. 15. Section 633A.4213, unnumbered paragraph 1, Code

1 Supplement 2005, is amended to read as follows:

2 A trustee of a revocable trust shall keep the qualified
3 beneficiaries of the trust reasonably informed about the
4 administration of the trust and the material facts necessary
5 to protect the beneficiaries' interests.

6 Sec. 16. Section 633A.4213, subsections 3 and 4, Code
7 Supplement 2005, are amended to read as follows:

8 3. A Except as provided in subsection 4, a trustee of-an
9 ~~irrevocable-trust~~ shall provide annually to each adult
10 beneficiary and the representative of any minor or incompetent
11 beneficiary who may receive a distribution of income or
12 principal during the accounting time period, an accounting,
13 unless an accounting has been waived specifically for that
14 accounting time period.

15 4. ~~This-section-does-not-apply-to-any-trust-where-the~~
16 ~~grantor~~ If a settlor has retained the right, or has
17 ~~transferred-the-right,~~ to change the beneficiaries of the
18 trust or if a party is the holder of a general power of
19 appointment, the trustee shall only be required to report to
20 the settlor or the party.

21 Sec. 17. NEW SECTION. 633A.4707 PERSON CAUSING DEATH.

22 A person who intentionally and unjustifiably causes or
23 procures the death of another shall not receive any property,
24 benefit, or other interest as a beneficiary of a trust by
25 reason of such death. Any property, benefit, or other
26 interest that such person would have received because of such
27 death shall be distributed as if the person causing the death
28 died before the person whose death was intentionally and
29 unjustifiably caused or procured.

30 Sec. 18. Section 633A.6301, Code Supplement 2005, is
31 amended by adding the following new subsection:

32 NEW SUBSECTION. 5. A settlor shall not represent and bind
33 a beneficiary under this trust code with respect to the
34 termination or modification of a trust pursuant to section
35 633A.2202 or 633A.2203.

EXPLANATION

1
2 This bill relates to the probate and trust codes.
3 The bill amends provisions in the eligibility requirements
4 for medical assistance pursuant to Code chapter 249A and
5 provides that unless a surviving spouse who applies for
6 medical assistance has a premarital agreement that
7 specifically precludes the surviving spouse from taking the
8 decedent spouse's elective share, the failure of a surviving
9 spouse to take an elective share constitutes a transfer of
10 assets for purposes of determining eligibility for medical
11 assistance under Code chapter 249A.
12 The bill provides that the treasurer of state shall report
13 to the department of human services the name and social
14 security number of a person entitled to unclaimed property
15 under the uniform disposition of unclaimed property Act
16 pursuant to Code chapter 556. The bill provides that such a
17 report shall be confidential.
18 The bill authorizes the department of human services to
19 claim and receive assets of decedents under the treasurer of
20 state's unclaimed property program.
21 The bill specifies that a surviving spouse or the spouse's
22 conservator may voluntarily elect to take the testamentary or
23 intestate share, or an elective share pursuant to Code section
24 633.237.
25 The bill eliminates language relating to the court's
26 approval of a conservator's duties in regard to the revocation
27 or modification of a trust.
28 The bill specifies that unless the trustee has actual
29 knowledge that a person holding a power to revoke the trust is
30 not competent, the holder of the power has rights afforded the
31 beneficiary, the duties of the trustee are owed to the holder
32 of the power, and the trustee shall follow a written direction
33 given by the holder of the power without liability for doing
34 so, as long as the action is authorized by the trust.
35 The bill adds the terms "debts" and "charges" to sections

1 of the Code referring to the obligations of a trust and a
2 deceased settlor that can be recovered from the settlor's
3 revocable trust. The terms are also added for purposes of
4 classification and order of payment of debts and charges
5 against a settlor's estate. The bill provides definitions of
6 such terms.

7 The bill includes specific notice and claim provisions
8 affecting creditors asserting claims against revocable trust
9 assets and specifies which notice provision applies to a
10 particular creditor and under what circumstances a creditor's
11 claims will be barred. The changes also specify how a
12 creditor must provide notice to a trustee of a claim, the
13 procedure for a trustee to deny a claim, the time limit for a
14 creditor to contest a denial of a claim, and how the one-year
15 statute of limitations affects a creditor who asserts a claim
16 against the assets of a trust.

17 The bill specifies that if the terms of the trust give a
18 person other than the settlor of a revocable trust power to
19 direct certain actions of the trustee, the trustee shall act
20 in accordance with an exercise of the power unless the trustee
21 knows the attempted exercise violates the terms of the trust
22 or the trustee knows that the person holding the power is not
23 competent.

24 The bill specifies that a trustee's duty to keep the
25 beneficiaries of the trust informed about the administration
26 of the trust and material facts necessary to protect the
27 beneficiaries' interests applies to an irrevocable trust. The
28 bill also specifies persons to whom the trustee shall send the
29 trustee's report for trusts in which a settlor has retained
30 the right to change a beneficiary or where a person is a
31 holder of a general power of appointment.

32 The bill provides that a person who intentionally and
33 unjustifiably causes or procures the death of another shall
34 not receive any property, benefit, or other interest as a
35 beneficiary of a trust by reason of such death. Any property,

1 benefit, or other interest that such person would have
2 received because of such death shall be distributed as if the
3 person causing the death died before the person whose death
4 was intentionally and unjustifiably caused or provoked.

5 The bill provides that a settlor shall not represent and
6 bind a beneficiary under this trust code with respect to the
7 termination or modification of a trust.

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