



# Iowa Trust Code

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**Materials prepared by:**

**Barbara Barrett  
Dickinson Law Firm  
1600 Hub Tower  
699 Walnut Street  
Des Moines, IA 50309-3944**

**Phone: 515-246-4520**

**Fax: 515-246-4550**

## IOWA TRUST CODE

### I. Background

- A. The Probate and Trust Law Section began a project to draft a trust code in 1994. The Project was taken over and finished by Todd Buchanan with input from members of the Section.
- B. The Act is based on various versions of Uniform Trust Act.
- C. The Uniform Trust Act has not yet been adopted by Uniform Commission or ABA. References herein to “Uniform Act” refer to July 1999 version.
- D. A copy of the Iowa Trust Code (referred to herein as “Act” or “Trust Code” is [attached as Exhibit A](#)).

### II. Effective Date and Application

- A. Unless otherwise noted in Act, applies to trusts created before, on, or after effective date, July 1, 2000.
- B. Applies to any trust proceedings commenced after effective date of Act and those commenced before unless court finds application would substantially interfere with effective conduct of proceedings or rights of parties or other interested persons.

### III. Governs Creation, Modification and Termination

#### A. Creation

- 1. Transfer of property during life or at death to another as trustee;
- 2. Declaration by owner that owner holds as trustee;
- 3. Exercise of power of attorney;
- 4. Promise enforceable by trustee to transfer property to trustee.

#### B. Validity

- 1. Settlor must be competent and intend to create trust;
  - a. Revocable transfer - same competency as required to make a will.
  - b. Irrevocable transfer - same competency as required for contract. *A higher degree of competency is required for the making of contracts*

*than for a testamentary disposition. Daughten v. Parson, 423 N.W. 2d 894 (Iowa App. 1988).*

2. Same person can't be sole trustee and sole beneficiary
  3. Unless charitable, honorary, or a trust for pets, must have definite beneficiary or beneficiary ascertainable within rule against perpetuities.
- C. Statute of Frauds - trust enforceable if:
1. In writing, signed by trustee or agent;
  2. Written instrument signed by settlor conveying property to trust;
  3. Declaration of trust must be signed before property is transferred;
  4. Trust agreement must be signed by settlor before or when property is transferred or by trustee at, before or after the transfer, but before property is transferred to third person.
- D. Authorizes creation of honorary trusts and trusts for pets.
1. Honorary trust cannot be longer than 21 years;
  2. Trust for care of animal living at settlor's death valid, but must terminate
- E. Defines Resulting Trusts and Constructive Trusts
1. Resulting Trust
    - a. If the trust fails, the transferee holds the property as a trust for the transferor or the transferor's estate unless:
      1. Instrument manifests an intent that no resulting trust shall arise; or
      2. Trust fails for illegality and policy against giving relief to person who has entered into illegal transaction outweighs policy against unjustly enriching transferee.

b. If transferee's estate has been closed and there is no question of its recipients, there is no need to reopen the estate in order to distribute to the recipients.

2. Constructive Trust - when person who holds title is subject to equitable duty to convey to another.

F. Modification or Termination of Irrevocable Trust

1. May be done by settlor and all beneficiaries.

a. On termination, property distributed as agreed by settlor and all beneficiaries or as ordered by court.

b. Beneficiaries are limited to eligible recipients of income or principal or who would receive principal or income of trust if it were terminated.

c. Consent of person who may bind beneficiary considered consent of beneficiary:

1. Holder of powers to revoke or presently exercisable general power of appointment may represent and bind persons subject to power;

2. To extent no conflict exists, persons whose interests are subject to testamentary general power of appointment may be represented by and bound by holder of power. *What does "to extent no conflict exists" mean? Note In Re Trust of Wilcockson, 368 N.W.2d 198 (Iowa App. 1985) where the Iowa Court of Appeals found that taker in default had no standing to object to termination of the trust by holder of power.*

3. To extent there is no conflict, conservator may represent and bind ward, trustee may represent and bind beneficiaries, personal beneficiary may represent and bind estate beneficiaries and if no conservator, parent may represent and bind child;

4. Unless otherwise represented, a minor, incompetent, unborn or unascertained person may be represented and bound by person having substantially identical interest in matter but only to extent person's interest is adequately represented. *Note: This goes beyond our current doctrine*

*of virtual representation found in Rule 43 IRCP which only covers unborns.*

2. Modification or Termination of Irrevocable Trust without Settlor
  - a. May be modified or terminated by court or with consent of all beneficiaries if continuance of the trust is not necessary to carry out material purpose of trust.
  - b. *Act does not provide definition of what constitutes "material"*
  - c. *Uniform Act provides that inclusion of spendthrift clause "may, but is not presumed to constitute a material purpose of the trust." See, In Re Trust of Willcockson, 368 NW2d 198 (Iowa App. 1985) where the court implies that a spendthrift clause might preclude termination of a trust.*
  - d. Court may set aside improper termination or modification by beneficiaries.
  - e. On termination, property to be distributed in accordance with probable intention of settlor or as agreed by beneficiaries.
  - f. Definition of beneficiary and consents required are same as III (F)(b) and (c) above.
  - g. *Unlike Uniform Act, there is no provision for modification if nonconsenting beneficiaries' interests are protected.*
3. Uneconomical noncharitable trust may be modified or terminated or new trustee appointed by court.
4. Trusts may be reformed to comply with settlor's intent if there was a mistake of fact or law or to achieve a tax objective. *Note that this may not be recognized for purposes of tax law.*
5. Trusts may be combined or divided into separate trusts. *"Non pro-rata" language missing; thus, relying on this statute may create capital gains issues.*

#### IV. Spendthrift Provisions

- A. If trust provides that beneficiary's interest is not subject to either voluntary or involuntary transfer, it may not be transferred or subjected to enforcement of judgment.
- B. Such provisions are invalid as to a creditor of beneficiary if beneficiary is settlor or as to distributions made to beneficiaries on termination or partial termination of trust.
- C. *Uniform Act also excepts judgments for support of beneficiary's child or current or former spouse.*

#### V. Revocable Trusts

- A. For trust created after effective date of Act, trusts are presumed to be revocable unless otherwise stated. *This reverses the presumption under law.*
- B. Trust may be revoked according to terms of trust, by a writing signed by settlor and delivered to trustee during settlor's lifetime or by later will or codicil referring to trust which devises property which would have otherwise passed by trust. *Uniform Act permits revocation "by any other method manifesting clear and convincing evidence of settlor's intent."*
- C. Trust may be revoked by attorney in fact of settlor only and to the extent the power of attorney so authorizes. *Bar form does not permit revocation by attorney in fact.*
- D. Unless prohibited by the trust, a conservator may revoke or modify with approval of court.
- E. While the trust is revocable, if settlor is competent, the holder of the power to revoke has the rights afforded beneficiaries and a trustee must follow the written direction of the holder of the power to revoke, without liability for doing so.
- F. Creditors of settlor or of holder of presently exercisable general power of appointment may reach assets of revocable trust, and following the settlor's or holder's death, trust property is subject to claims of settlor's creditors and costs of administration of settlor's estate to extent estate is inadequate to satisfy claims or costs. *This is in accord with Estate of Nagel, 580 N.W.2d 810 (Iowa 1998) and a majority of courts from other jurisdictions.*

- G. Construction - Code provisions consistent with construction of wills.
1. Children born after making of trust take intestate share. *This provision is meaningless if children are children of spouse.*
  2. Provisions in favor of spouse revoked by divorce or dissolution; reinstated if remarry.
  3. *Note that these rules only apply to revocable trusts.*
- H. Proceeding to contest validity of trust must be brought within one year; unless proceeding is pending, trustee may distribute property to beneficiaries six months after death of settlor without liability; beneficiaries are then potentially liable.

#### VI. Notice to Creditors, Heirs, Spouse and Beneficiaries

- A. Creditor of deceased settlor must bring suit to enforce claim against trust assets within one year of decedent's death. If probate has been commenced, limitation provisions of Probate Code apply.
- B. If no probate has been commenced, a trustee may reduce time for filing claims by notice to heirs, spouse and creditors:
1. Notice must be published once a week for two weeks in a newspaper in county where settlor was domiciled.
  2. At any time trustee has knowledge of name and addresses of creditor(s) which will not be paid, trustee must send notice to creditors by ordinary mail.
  3. Trustee shall also give notice to surviving spouse, heirs and trust beneficiaries. *Act does not provide that a spouse has any rights to elect against the trust or that an election against a will includes trust property.*
  4. Act sets out form of notice.
  5. Notice procedure reduces time for filing claims or challenging trust to 60 days from date of second publication or 30 days from actual notice, whichever is later. Claims are to be sent to trustee by certified mail.
  6. If claimant is not satisfied within 60 days of filing claim, must commence action against trust.

- C. Trustee who fails to make provision for payment of claims before distribution of trust assets to beneficiaries is jointly and severally liable with beneficiaries, but is entitled to indemnification from beneficiaries. *Act provides no limits on beneficiaries' liability to trustee.*

## VII. Trust Administration

- A. Bond not required unless required by terms of trust or by court.
- B. Co-trustees may exercise power by majority decision. *Current law requires unanimous consent.*
  - 1. If no majority, a trustee may apply to court or trustees can agree to alternative form of dispute resolution.
  - 2. If co-trustee office vacant, remaining co-trustees may act.
  - 3. If co-trustee unable to act because of absence, illness or temporary incapacity, remaining co-trustees may act if necessary to accomplish purposes of trust or to avoid irreparable injury to trust property.
  - 4. Each co-trustee is to participate in administration of trust and take reasonable steps to prevent a breach of trust and to compel a co-trustee to redress a breach of trust.
  - 5. A co-trustee who does not join in exercising a power is not liable to third party for consequences of exercising of power.
    - a. A dissenting co-trustee who joins in an action at the direction of the majority is not liable if dissent is expressed in writing to any other co-trustee before action is taken.
    - b. Co-trustee not excused from failing to discharge duties as trustee.
- C. A vacancy in office of trustee shall be filled by the successor named in trust and if none, by trust company chosen by agreement of adult beneficiaries, by a person or entity selected by the vote of a majority of all adult beneficiaries and parent or legal guardian of minor or incompetent beneficiaries, or by a person or entity named by court.
- D. Act sets forth procedures for resigning.



- E. Trustee may be removed in accordance with terms of trust or on petition to court by settlor, co-trustee or beneficiary.
1. Removal may be granted on following grounds:
    - a. The trustee has committed material breach of trust;
    - b. The trustee is unfit;
    - c. There is hostility or lack of cooperation among co-trustees;
    - d. The trustee's investment performance is consistently and substantially substandard;
    - e. The trustee's compensation is excessive under the circumstances;
    - f. For other good cause.
  2. *Uniform Act also includes "changed circumstances" as a ground.*
  3. *Should grounds be different than for modification of trust?*
- F. Delivery of Property - a former trustee or, if trustee has died or has become disabled, the personal representative or conservator of the trustee, is responsible for the property until delivered to successor trustee.
- G. Compensation of Trustee
1. Trustee is entitled to reasonable compensation if terms of trust do not specify compensation.
  2. If terms of compensation are set forth in the trust, the compensation may be changed by court if the trustee's duties have changed, the compensation is shown to be inequitable or unreasonably high or low or upon a showing of extraordinary circumstances.
  3. Trustee must give 30 days prior notice to beneficiaries of fee increase.
- H. Trustee governed by terms of trust and Trust Code.
1. Terms of trust may expand, alter, restrict or eliminate application of Trust Code.

2. Nothing can authorize trustee to act in bad faith or in disregard of purposes of trust or interests of beneficiaries.
- I. Trustee must administer trust solely in interest of beneficiaries.
1. Any transaction in which trustee has conflict with personal interest is voidable by affected beneficiary unless:
    - a. Transaction is expressly authorized by terms of trust;
    - b. Beneficiary consents to or affirms transaction or releases trustee from liability;
    - c. Transaction is approved by court after notice to interested parties.
  2. The voidable provision does not apply to trustee's compensation or the trustee acting with self in another fiduciary capacity.
- J. Trustee governed by prudent person standard, but a trustee with special skills or expertise has duty to use those skills or expertise.
- K. Delegation
1. Trustee may not delegate entire administration of trust or responsibility regarding discretionary distributions, but may delegate functions that prudent trustee might delegate.
  2. If trustee uses reasonable care in selecting agent, establishing scope and terms of trust and reviewing agent's performance and redressing improper act of agent, will not be liable to beneficiaries for action of agent.
- L. Duty to Inform and Account
1. Within 30 days after acceptance of the office or after the death of settlor, the trustee must inform the beneficiaries of the acceptance or give notice to vested beneficiaries of their interests.
  2. Must give advance notice to beneficiaries of a transaction involving significant portion of trust for which the value is not readily ascertainable.
  3. Trustee shall account at least annually, at termination of trust, and on change of trustee.

## VIII. Uniform Prudent Investor Act

- A. Adopts prudent investor standard and requires evaluation of trustee's actions in context of trust provisions as a whole and as part of overall investment strategy and not by looking at individual assets in isolation.
- B. Act sets out circumstances, to extent relevant, that trustee should consider:
  - 1. General economic conditions;
  - 2. The possible effect of inflation or deflation;
  - 3. The expected tax consequences of investment decisions or strategies;
  - 4. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
  - 5. The expected total return from income and the appreciation of capital;
  - 6. Other resources of the beneficiaries;
  - 7. Needs for liquidity, regularity of income, and preservation or appreciation of capital;
  - 8. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- C. Unless trustee reasonably determines that trust purposes are otherwise better served, trustee must diversify assets.
- D. Trustee must act impartially in investing and managing trust property, taking into account differing interests of beneficiaries.
- E. Trustee shall incur only appropriate and reasonable costs given the purposes of the trust and the skills of the trustee.
- F. Compliance with prudent investor rule judged by facts and circumstances at time of the trustee's decision and not by hindsight.
- G. The Act sets out language for trusts that will invoke the prudent investor rule, unless otherwise modified or limited.

IX. Extensive powers of trustee that trustee may perform without court order unless limited by the terms of the trust are set forth in Subpart 4.

X. Liability of Trustee to Beneficiaries:

A. Remedies for breach of trust are exclusively equitable.

B. Remedies: action may be brought to:

1. Compel trustee to perform duty;
2. Enjoin trustee from committing breach of trust;
3. Compel trustee to redress by payment of money or otherwise; measure of damage is amount required to restore the value of trust property and distributions or the lost profits, whichever is greater;
4. Appoint a receiver or temporary trustee;
5. Remove trustee;
6. Reduce or deny compensation to trustee;
7. Nullify act, impose equitable lien, constructive trust, or recover property or its proceeds.

C. Limitation of Action after Final Account

1. Claim barred one year after beneficiary has received final account adequately disclosing existence of claim.
2. Claim for breach against a trustee who has presented a final report more than one year prior to effective date of act is time barred.

D. Trustee not liable to beneficiary who has:

1. Consented to conduct;
2. Released trustee; or

3. Affirmed transaction.

- a. Does not apply if beneficiary did not know rights and material facts and trustee did not reasonably believe beneficiary knew or consented; release or affirmance induced by trustee's improper conduct.

- E. A trust instrument cannot exculpate a trustee from liability for breach of trust committed intentionally, with gross negligence, in bad faith, with reckless indifference to beneficiary, or for any profit derived by trustee from breach.

XI. Rights of Third Parties

- A. Except as otherwise provided in a contract, a trustee is not personally liable on a contract entered into in a trustee's fiduciary capacity unless the trustee fails to reveal the representative capacity or identify the trust in the contract.
- B. The trustee is liable for obligations from ownership or control of the trust property or for torts committed only if the trustee is personally at fault.
- C. A claim on the property or a tort may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity whether or not the trustee is personally liable.

XII. Obligations of Third Parties.

- A. If the third party acts in good faith and for a valuable consideration without knowledge that the trustee is exceeding the trustee powers, then:
  - 1. The third party is not bound to inquire whether the trustee has power to act and may assume the existence of the trust power and its proper exercise; and
  - 2. A third party is fully protected in dealing with or assisting a trustee.
- B. A third party who acts in good faith is not bound to insure the proper application of the trust property.
- C. If a third party acting in good faith enters into a transaction with a former trustee without knowledge that that person is no longer the trustee, the third party is fully protected.

XIII. Certification of Trust

- A. The Trust Code provides for a certification in lieu of providing a copy of the trust.

- B. The certification must contain the following:
    - 1. That the trust has not been revoked, modified or amended such that it would cause the representation to be incorrect;
    - 2. That the statement is being signed by all the currently acting trustees;
    - 3. It must be sworn and subscribed to under penalty of perjury before a notary public.
  - C. A certification need not contain the dispositive provisions which set forth the distribution of the trust estate.
  - D. A person may require that the person providing certification provide copies of excerpts from the trust which designate the trustee and confer the power to act in the pending transaction.
  - E. A person who acts in reliance upon a certification and without knowledge that the representations are incorrect is not liable for so acting and may assume the existence of the facts contained in the certification.
  - F. The transaction and a lien created by the transaction entered into by the trustee and a person acting in reliance on the certification is enforceable against the trust assets.
  - G. A person making a demand for the trust instrument in addition to the certification of trust or excerpts shall be liable for damages, including attorneys fees, incurred as a result of the refusal to accept the certification of trust or excerpts in lieu of the trust instrument if the court determines the person acted unreasonably.
  - H. This section does not limit rights of beneficiaries to obtain copies of the trust.
- XIV. A person who, in bad faith, wrongfully takes, conceals or disposes of trust property is liable for twice the value of the property, attorneys fees, court costs and, where consistent with the existing law, punitive damages.
- XV. Trust Construction - Survivorship with Respect to Future Interests
- A. Unless otherwise stated by the trust, the interest of each beneficiary is contingent upon the beneficiary surviving until the date the beneficiary becomes entitled to possession or enjoyment of the beneficiary's interest.

- B. If the beneficiary dies prior to becoming entitled to possession, the following rules apply:
1. If the terms of the trust provide for an alternate beneficiary who is living, the alternate beneficiary succeeds to the interest.
  2. If there is no alternate beneficiary and the beneficiary has issue living on the date of the interest, the issue shall receive the interest of the beneficiary.
  3. If both the beneficiary and the alternate beneficiary die prior to the beneficiary becoming entitled to the interest and the beneficiary has no issue who are living, the issue of the alternate beneficiary shall take.
  4. If neither the beneficiary nor the alternate beneficiary have then living issue, the beneficiary's interest shall be distributed as a resulting trust back to the settlor, the settlor's estate or the beneficiaries of the settlor estate.
- C. *This provision is loosely based on §2-707 of the Uniform Probate Code and creates a form of antilapse statute in the area of future interests.*

#### XVI. Charitable Trusts

- A. The Trust Code provides for a charitable trust and state that if the trust does not indicate a particular charitable purpose or beneficiary, the trustee may so select.
- B. Application of Cy-Pres.
1. A charitable trust will not fail if the particular purpose for which the trust was created becomes impractical, unlawful or impossible to fulfill.
  2. If the particular charitable purpose becomes impractical, unlawful or impossible to fulfill, the court may modify the terms or direct that the property be distributed in the manner best meeting the settlor's general charitable purposes. Likewise, if an administrative provision becomes impractical, unlawful or impossible or otherwise impairs the effective administration of the trust, the court may modify.
  3. A trust with an uneconomically low value may, on petition by a trustee or other interested person, be modified or terminated by the court or a court may appoint a new trustee. Upon termination, the court shall distribute the trust property consistent with the settlor's charitable purposes.

- C. Interested in persons in proceedings include the settlor, the trustee, the attorney general and any charitable entity or other person with a special interest in the trust.

## XVII. Proceedings Concerning Trusts

- A. Subject matter jurisdiction - The (*probate*) court has exclusive jurisdiction of proceedings concerning the internal affairs of the trust. Internal affairs include the following:
1. To construe or determine the terms of the trust;
  2. To determine the existence of any immunity, power, privilege, duty, or right;
  3. To determine the validity of a trust provision;
  4. To ascertain beneficiaries and determine to whom property shall pass or be delivered upon final or partial termination of the trust;
  5. To settle accounts and pass upon the acts of the trustee, including the exercise of discretionary powers;
  6. Instruct the trustee;
  7. Compel the trustee to report information about the trust or account to the beneficiaries;
  8. Grant powers to or modify powers of the trustee;
  9. Fix or allow payment of the trustee's compensation or review the reasonableness of the compensation;
  10. Appoint or remove a trustee;
  11. Accept the resignation of a trustee;
  12. Compel redress of a breach of trust by any available remedy;
  13. Approve or direct the modification or termination of the trust;
  14. Approve or direct the combination or division of trusts;
  15. Authorize or direct transfer of a trust or trust property to or from another jurisdiction;



16. Determine liability of a trust for debts or the expenses of administration of the estate of a deceased settlor;
  17. Determine any other issue that will aid in the administration of the trust.
- B. The (*probate*) court has concurrent jurisdiction of actions or proceedings to determine the existence of a trust, actions or proceedings by or against creditors or debtors of the trust and other actions or proceedings involving trustees and third parties.
- C. Jurisdiction Over Parties
1. The court will have jurisdiction over a trust having its principal place of administration in this state. Principal place of administration is:
    - a. The usual place for the day-to-day activities of the trust as carried on by the trustee or the trustee's representative.
    - b. If it cannot be determined, it will be as follows:
      1. If the trust has one trustee, it will be the trustee's residence or usual place of business;
      2. If the trust has more than one trustee, it will be the residence or usual place of business of any of the co-trustees as agreed upon by them or, if no agreement, at the residence or usual place of business of any of the trustees.
  2. The beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court.

## XVIII. Venue

- A. A proceeding may be commenced in the county where the trust's principal place of administration is or, if the trust is created by will, also where the decedent's estate is administered.
- B. If a trust not created by will has no trustee, a proceeding for appointing a trustee shall be commenced where the beneficiary resides or the trust property or some portion of it is located.
- C. The Trust Code provides for transfers of jurisdiction under certain conditions.

- D. The general rule is that the administration of a trust will proceed without judicial intervention except to the extent jurisdiction of the court is invoked by interested parties or otherwise as provided by law.

XIX. Settlement Agreements

- A. Persons interested in the internal affairs of the trust as defined XVIIIA, above, may approve a judicial settlement and represent and bind other persons interested.
1. Notice of a judicial settlement is to be given to every interested person or to one who can bind an interested person. See III F(1)(c), above, for persons who can represent and bind another.
  2. Notice is given to unborn or unascertained persons who are not represented by giving notice to all known persons whose interests in the proceedings are substantially identical to the unborn or unascertained.
  3. Appointment of a Guardian Ad Litem
    - a. At any point in a judicial proceeding, the court may appoint a guardian ad litem to represent and approve settlement on behalf of the interested minor, incapacitated, unborn or unascertained person:
      1. If the court determines that representation of the interest otherwise would be inadequate;
      2. If not precluded by conflict of interest, a guardian ad litem may represent several persons or interests;
      3. The court shall set out its reasons for appointing a guardian ad litem as part of the record;
      4. In approving a judicially supervised settlement, a guardian ad litem may consider general family benefit.
- B. Except to the extent that the terms of the trust indicate that the procedures specified are not to apply, persons interested in the internal affairs of the trust may approve a nonjudicial settlement containing such terms and conditions as the court might properly approve and represent and bind other persons interested. See III F(1)(c), above, for persons who can represent or bind another.

1. Appointment of a Special Representative.
  - a. In connection with a nonjudicial settlement, the court may appoint a special representative to represent the interests of and approve a settlement on behalf of designated persons who may be appointed to represent several persons or interests if there is no conflict.
  - b. In approving a settlement, a special representative may consider general family benefit and may require that those representatives receive a benefit. *The latter language regarding a benefit is not part of the Uniform Act.*

**Note:** Although not specifically within the scope of this outline, the legislature also passed the Uniform Principal and Income Act, also effective July 1, 2000. Of particular relevance to probate practitioners is the fact that income earned during the administration of an estate is treated differently than is currently the case. Currently, all of the income earned by assets under the control of the personal representative is available for payment of taxes and general estate obligations and any excess becomes “part of the general assets of such estate.” Section 633.352 (*Code of Iowa 1999*). Under the Uniform Act, net income from property specifically devised shall be paid to the beneficiary and shall not be subject to general estate obligations. Thus, personal representatives will have to maintain more detailed records of income earned during the estate proceedings. [See Exhibit B.](#)

### Exhibits

- A. [Iowa Trust Code](#)
- B. [House File 663](#)

This file contains STRIKE and UNDERSCORE. If you cannot see either STRIKE or UNDERSCORE attributes or would like to change how these attributes are displayed, please use the following form to make the desired changes.

House File 663

Partial Bill History

Bill Introduced: H.J. 651

Committee Report Issued: S.J. 897

Passed House: H.J. 747

Passed Senate: S.J. 1146

Signed by Governor: H.J. 2177

Complete Bill History

Bill Text

PAG LIN

1 1 HOUSE FILE 663  
1 2  
1 3 AN ACT  
1 4 RELATING TO THE ESTABLISHMENT OF AN IOWA TRUST CODE, AND  
1 5 PROVIDING AN EFFECTIVE DATE.  
1 6  
1 7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
1 8  
1 9 DIVISION XX  
1 10 TRUST CODE  
1 11 Part 1  
1 12 DEFINITIONS AND GENERAL PROVISIONS  
1 13 Section 1. NEW SECTION. 633.1101 SHORT TITLE.  
1 14 This division may be cited as the "Iowa Trust Code" or  
1 15 "Trust Code".  
1 16 Sec. 2. NEW SECTION. 633.1102 DEFINITIONS.  
1 17 For purposes of this division:  
1 18 1. "Beneficiary", as it relates to a trust beneficiary,  
1 19 includes a person who has any present or future interest in  
1 20 the trust, vested or contingent, and also includes the owner  
1 21 of an interest by assignment or other transfer.  
1 22 2. "Charitable trust" means a trust created for a  
1 23 charitable purpose as specified in section 633.5101.  
1 24 3. "Competency" means any one of the following:

1 25 a. In the case of a revocable transfer, "competency" means  
1 26 the degree of understanding required to execute a will.

1 27 b. In the case of an irrevocable transfer, "competency"  
1 28 means the degree of understanding required to execute a  
1 29 contract.

1 30 c. In other circumstances not clearly relating to a  
1 31 revocable or irrevocable transfer, "competency" means the  
1 32 ability to make rational decisions regarding one's financial  
1 33 affairs.

1 34 4. "Conservator" means a person appointed by a court to  
1 35 manage the estate of a minor or adult individual.

2 1 5. "Court" means any Iowa district court.

2 2 6. "Fiduciary" includes a personal representative,  
2 3 executor, administrator, guardian, conservator, and trustee.

2 4 7. "Guardian" means a person appointed by a court to make  
2 5 decisions with respect to the support, care, education,  
2 6 health, and welfare of a minor or adult individual, but  
2 7 excludes one who is merely a guardian ad litem. A minor's  
2 8 custodial parent shall be deemed to be the child's guardian in  
2 9 the absence of a court-appointed guardian.

2 10 8. "Instrument" means a signed writing.

2 11 9. "Interested person" includes a trustee, an acting  
2 12 successor trustee, a beneficiary who may receive income or  
2 13 principal currently from the trust, or would receive principal  
2 14 of the trust if the trust were terminated at the time relevant  
2 15 to the determination, and a fiduciary representing an  
2 16 interested person. The meaning as it relates to particular  
2 17 persons may vary from time to time according to the particular  
2 18 purpose of, and matters involved in, any proceeding.

2 19 10. "Person" means an individual or any legal or  
2 20 commercial entity.

2 21 11. "Petition" includes a complaint or statement of claim.

2 22 12. "Property" means anything that may be the subject of  
2 23 ownership, whether real or personal, legal or equitable,  
2 24 tangible or intangible, and includes any interest in such  
2 25 item, including a chose in action, claim, or beneficiary  
2 26 designation under a policy of insurance, employees' trust, or  
2 27 other arrangement, whether revocable or irrevocable.

2 28 13. "Settlor" means a person, including a testator, who  
2 29 creates a trust.

2 30 14. "State" means a state of the United States, the  
2 31 District of Columbia, the Commonwealth of Puerto Rico, or any  
2 32 territory or insular possession subject to the jurisdiction of  
2 33 the United States.

2 34 15. "Term" or "terms", when used in relation to a trust,  
2 35 means the manifestation of the settlor's intent regarding a

3 1 trust's provisions at the time of the trust's creation or  
3 2 amendment. "Term" includes those concepts expressed directly  
3 3 in writing, as well as those inferred from constructional  
3 4 preferences or rules.

3 5 16. "Trust" means an express trust, charitable or  
3 6 noncharitable, with additions thereto, wherever and however  
3 7 created, including a trust created or determined by a judgment  
3 8 or decree under which the trust is to be administered in the  
3 9 manner of an express trust. "Trust" does not include any of  
3 10 the following:

3 11 a. A Totten trust account.

3 12 b. A custodial arrangement pursuant to the uniform  
3 13 transfers to minors Act of any state.

3 14 c. A business trust that is taxed as a partnership or  
3 15 corporation.

3 16 d. An investment trust subject to regulation under the  
3 17 laws of this state or any other jurisdiction.

3 18 e. A common trust fund.

3 19 f. A voting trust.

3 20 g. A security arrangement.

3 21 h. A transfer in trust for purpose of suit or enforcement  
3 22 of a claim or right.

3 23 i. A liquidation trust.

3 24 j. A trust for the primary purpose of paying debts,  
3 25 dividends, interest, salaries, wages, profits, pensions, or  
3 26 employee benefits of any kind.

3 27 k. An arrangement under which a person is a nominee or  
3 28 escrow agent for another.

3 29 l. Constructive or resulting trusts.

3 30 17. "Trust company" means a person who has qualified to  
3 31 engage in and conduct a trust business in this state.

3 32 18. "Trustee" includes an original, additional, or  
3 33 successor trustee, whether or not appointed or confirmed by a  
3 34 court.

3 35 Sec. 3. NEW SECTION. 633.1103 PER STIRPES RULE OF  
4 1 DESCENT.

4 2 Unless the trust instrument provides otherwise, all gifts  
4 3 to multigeneration classes shall be per stirpes.

4 4 Sec. 4. NEW SECTION. 633.1104 COMMON LAW OF TRUSTS.

4 5 Except to the extent that this division modifies the common  
4 6 law governing trusts, the common law of trusts shall  
4 7 supplement this trust code.

4 8 Sec. 5. NEW SECTION. 633.1105 TRUST PROVISIONS CONTROL.

4 9 The provisions of a trust shall always control and take  
4 10 precedence over any section of this trust code to the  
4 11 contrary.

4 12 Sec. 6. NEW SECTION. 633.1106 GENERAL RULE CONCERNING  
4 13 APPLICATION OF THE IOWA TRUST CODE.

4 14 1. This trust code applies to all trusts within the scope  
4 15 of this trust code, regardless of whether the trust was  
4 16 created before, on, or after the effective date of this Act,  
4 17 except as otherwise stated in this trust code.

4 18 2. This trust code applies to all proceedings concerning  
4 19 trusts within the scope of this trust code commenced on or  
4 20 after the effective date of this Act.

4 21 3. This trust code applies to all trust proceedings  
4 22 commenced before the effective date of this Act unless the  
4 23 court finds that application of a particular provision of this  
4 24 trust code would substantially interfere with the effective  
4 25 conduct of the proceedings or the rights of the parties or  
4 26 other interested persons. In that case, the particular  
4 27 provision of this trust code at issue shall not apply, and the  
4 28 court shall apply prior law.

4 29 Sec. 7. NEW SECTION. 633.1107 SCOPE OF TRUST CODE.

4 30 This trust code is intended to apply to trusts, as defined  
4 31 in section 633.1102, subsection 16, that are intentionally  
4 32 created, or deemed to be intentionally created, by individuals  
4 33 and other entities.

4 34 Part 2

4 35 CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF  
5 1 TRUSTS

5 2 Subpart 1

5 3 CREATION AND VALIDITY OF TRUSTS

5 4 Sec. 8. NEW SECTION. 633.2101 METHODS OF CREATING  
5 5 TRUSTS.

5 6 A trust may be created by any of the following methods:

5 7 1. Transfer of property to another person as trustee  
5 8 during the settlor's lifetime, or by will taking effect upon  
5 9 the settlor's death.

5 10 2. Declaration by the owner of property that the owner  
5 11 holds property as trustee.

5 12 3. Exercise of a power of appointment in favor of another  
5 13 person as trustee.

5 14 4. A promise enforceable by the trustee to transfer  
5 15 property to the trustee.

5 16 Sec. 9. NEW SECTION. 633.2102 REQUIREMENTS FOR VALIDITY.

5 17 1. A trust is created only if all of the following  
5 18 elements are satisfied:

5 19 a. The settlor was competent and indicated an intention to  
5 20 create a trust.

5 21 b. The same person is not the sole trustee and sole  
5 22 beneficiary.

5 23 c. Unless the trust is a charitable trust, an honorary  
5 24 trust, or a trust for the care of an animal, the trust has a  
5 25 definite beneficiary or a beneficiary who will be definitely  
5 26 ascertained within the period of the applicable rule against  
5 27 perpetuities.

5 28 2. A definite or definitely ascertainable beneficiary  
5 29 includes a beneficiary or class of beneficiaries designated  
5 30 under a power to select the beneficiaries granted by the terms  
5 31 of the trust to the trustee or another person.

5 32 Sec. 10. NEW SECTION. 633.2103 STATUTE OF FRAUDS.

5 33 1. A trust is enforceable when evidenced by either of the  
5 34 following:

5 35 a. A written instrument signed by the trustee, or by the  
6 1 trustee's agent if authorized in writing.

6 2 b. A written instrument conveying the trust property  
6 3 signed by the settlor, or by the settlor's agent if authorized  
6 4 in writing.

6 5 2. If an owner of property declares that property is held  
6 6 upon a trust for which a written instrument is required, the  
6 7 written instrument evidencing the trust must be signed by the  
6 8 settlor according to one of the following:

6 9 a. Before or at the time of the declaration.

6 10 b. After the time of the declaration but before the  
6 11 settlor has transferred the property.

6 12 3. If an owner of property while living transfers property  
6 13 to another person to hold upon a trust for which a written  
6 14 instrument is required, the written instrument evidencing the  
6 15 trust must be signed according to one of the following:

6 16 a. By the settlor, concurrently with or before the  
6 17 transfer.

6 18 b. By the trustee, concurrently with or before the  
6 19 transfer, or after the transfer but before the trustee has  
6 20 transferred the property to a third person.

6 21 Sec. 11. NEW SECTION. 633.2104 TRUST PURPOSES.

6 22 1. A trust is created only if it has a private or  
6 23 charitable purpose that is not unlawful or against public  
6 24 policy.

6 25 2. A trust created for a private purpose must be  
6 26 administered for the benefit of its beneficiaries.

6 27 Sec. 12. NEW SECTION. 633.2105 HONORARY TRUSTS – TRUSTS  
6 28 FOR PETS.

6 29 1. A trust for a lawful noncharitable purpose for which  
6 30 there is no definite or definitely ascertainable beneficiary  
6 31 is valid but may be performed by the trustee for only twenty-  
6 32 one years, whether or not the terms of the trust contemplate a  
6 33 longer duration.



6 34 2. A trust for the care of an animal living at the  
6 35 settlor's death is valid. The trust terminates when no living  
7 1 animal is covered by its terms.

7 2 3. A portion of the property of a trust authorized by this  
7 3 section shall not be converted to any use other than its  
7 4 intended use unless the terms of the trust so provide or the  
7 5 court determines that the value of the trust property  
7 6 substantially exceeds the amount required.

7 7 4. The intended use of a trust authorized by this section  
7 8 may be enforced by a person designated for that purpose in the  
7 9 terms of the trust or, if none, by a person appointed by the  
7 10 court.

7 11 Sec. 13. NEW SECTION. 633.2106 RESULTING TRUSTS.

7 12 1. Where the owner of property gratuitously transfers the  
7 13 property and manifests in the trust instrument an intention  
7 14 that the transferee should hold the property in trust but the  
7 15 trust fails, the transferee holds the trust estate as a  
7 16 resulting trust for the transferor or the transferor's estate,  
7 17 unless all of the following is true:

7 18 a. The transferor manifested in the trust instrument an  
7 19 intention that no resulting trust should arise.

7 20 b. The intended trust fails for illegality and the policy  
7 21 against unjust enrichment of the transferee is outweighed by  
7 22 the policy against giving relief to a person who has entered  
7 23 into an illegal transaction.

7 24 2. Where the owner of property gratuitously transfers the  
7 25 property subject to a trust which is properly declared and  
7 26 which has fully performed without exhausting the trust estate,  
7 27 the trustee holds the surplus as a resulting trust for the  
7 28 transferor or the transferor's estate, unless the transferor  
7 29 manifested in the trust instrument an intention that no  
7 30 resulting trust of the surplus should arise.

7 31 3. If the transferor's estate is the recipient of property  
7 32 under this section and the administration of that estate has  
7 33 been closed and there is no question as to the proper  
7 34 recipients of the property, it is not necessary to reopen the  
7 35 estate administration for the purpose of distribution.

8 1 Sec. 14. NEW SECTION. 633.2107 CONSTRUCTIVE TRUSTS.

8 2 A constructive trust arises when a person holding title to  
8 3 property is subject to an equitable duty to convey the  
8 4 property to another, on the ground that the person holding  
8 5 title would be unjustly enriched if the person were permitted  
8 6 to retain the property.

8 7 Subpart 2

8 8 MODIFICATION AND TERMINATION OF TRUSTS

8 9 Sec. 15. NEW SECTION. 633.2201 TERMINATION OR

8 10 MODIFICATION OF TRUST.

8 11 1. In addition to the methods specified in sections  
8 12 633.2202 through 633.2205, a trust terminates when any of the  
8 13 following occurs:

8 14 a. The term of the trust expires.

8 15 b. The trust purpose is fulfilled.

8 16 c. The trust purpose becomes unlawful or impossible to  
8 17 fulfill.

8 18 d. The trust is revoked.

8 19 2. On termination of a trust, the trustee may exercise the  
8 20 powers necessary to wind up the affairs of the trust and  
8 21 distribute the trust property to those entitled to the trust  
8 22 property.

8 23 3. For purposes of sections 633.2202 through 633.2205, a  
8 24 beneficiary is limited to a person that is an eligible  
8 25 recipient of income or principal, or would receive principal  
8 26 or income from the trust if it were terminated.

8 27 Sec. 16. NEW SECTION. 633.2202 MODIFICATION OR  
8 28 TERMINATION BY SETTLOR AND ALL BENEFICIARIES.

8 29 1. An irrevocable trust may be modified or terminated upon  
8 30 the consent of the settlor and all of the beneficiaries.

8 31 2. Upon termination of the trust, the trustee shall  
8 32 distribute the trust property as agreed by the settlor and all  
8 33 beneficiaries, or in the absence of unanimous agreement, as  
8 34 ordered by the court.

8 35 3. For purposes of this section, the consent of a person  
9 1 who may bind a beneficiary or otherwise act on a beneficiary's  
9 2 behalf is considered the consent of the beneficiary.

9 3 Sec. 17. NEW SECTION. 633.2203 MODIFICATION OR  
9 4 TERMINATION OF IRREVOCABLE TRUST IF NO MATERIAL PURPOSE.

9 5 1. An irrevocable trust may be terminated or modified  
9 6 either by the court or upon consent of all of the  
9 7 beneficiaries if continuance of the trust on the same or  
9 8 different terms is not necessary to carry out a material  
9 9 purpose.

9 10 2. Upon petition to the court by the settlor, trustee, or  
9 11 other interested person, the court may set aside an improper  
9 12 termination or modification by the beneficiaries.

9 13 3. Upon termination of the trust, the trustee shall  
9 14 distribute the trust property in accordance with the probable  
9 15 intention of the settlor or as agreed by the beneficiaries.

9 16 4. For purposes of this section, the consent of a person  
9 17 who may bind a beneficiary is considered the consent of the  
9 18 beneficiary.

9 19 Sec. 18. NEW SECTION. 633.2204 NONCHARITABLE TRUST WITH  
9 20 UNECONOMICALLY LOW VALUE.

9 21 1. On petition by a trustee or beneficiary, the court may  
9 22 terminate or modify a noncharitable trust or appoint a new  
9 23 trustee if the court determines that the value of the trust  
9 24 property is insufficient to justify the cost of administration  
9 25 involved and that continuation of the trust under its existing  
9 26 terms would defeat or significantly impair the accomplishment  
9 27 of the trust purposes.

9 28 2. Upon termination of a trust under this section, the  
9 29 trustee shall distribute the trust property in accordance with  
9 30 the probable intention of the settlor under the circumstances.

9 31 Sec. 19. NEW SECTION. 633.2205 REFORMATION – TAX  
9 32 OBJECTIVES.

9 33 1. The terms of a trust may be reformed to conform to the  
9 34 settlor's intent if the failure to conform was due to a  
9 35 mistake of fact or law and the settlor's intent can be  
10 1 established.

10 2 2. The terms of the trust may be construed or modified, in  
10 3 a manner that does not violate the settlor's probable intent,  
10 4 to achieve the settlor's tax objectives.

10 5 Sec. 20. NEW SECTION. 633.2206 COMBINATION OF TRUSTS.

10 6 1. A trustee, without approval of court, may combine two  
10 7 or more trusts with substantially similar beneficial  
10 8 interests.

10 9 2. On petition by a trustee or beneficiary, the court may  
10 10 combine two or more trusts, whether or not the beneficial  
10 11 interests are substantially similar, if the court determines  
10 12 that administration as a single trust will not defeat or  
10 13 significantly impair the accomplishment of the trust purposes  
10 14 or the rights of the beneficiaries.

10 15 3. Where the court orders the combination of two trusts  
10 16 that are not essentially identical, the court shall include in  
10 17 its order a finding as to which trust provisions control.

10 18 Sec. 21. NEW SECTION. 633.2207 DIVISION OF TRUSTS.

10 19 1. Without approval of a court, a trustee may divide a  
10 20 trust into two or more separate trusts with substantially  
10 21 similar terms if the division will not defeat or substantially  
10 22 impair the accomplishment of the trust purposes or the rights  
10 23 of the beneficiaries.

10 24 2. On petition by a trustee or beneficiary, the court may  
10 25 divide a trust into two or more separate trusts, whether or  
10 26 not their terms are similar, if the court determines that  
10 27 dividing the trust is in the best interest of the  
10 28 beneficiaries and will not defeat or substantially impair the  
10 29 accomplishment of the trust purposes or the rights of the  
10 30 beneficiaries.

10 31

Subpart 3

10 32 SPENDTHRIFT PROTECTION

10 33 Sec. 22. NEW SECTION. 633.2301 SPENDTHRIFT PROTECTION  
10 34 RECOGNIZED.

10 35 Except as otherwise provided in section 633.2302, if the  
11 1 terms of the trust provide that a beneficiary's interest in  
11 2 the income and principal is not subject to either voluntary or  
11 3 involuntary transfer, the beneficiary's interest shall not be  
11 4 transferred and is not subject to enforcement of a money  
11 5 judgment until paid to the beneficiary.

11 6 Sec. 23. NEW SECTION. 633.2302 EXCEPTIONS TO SPENDTHRIFT  
11 7 PROTECTION.

11 8 A term of a trust prohibiting an involuntary transfer of a  
11 9 beneficiary's interest shall be invalid as against claims by  
11 10 any of the following:

11 11 1. Any creditor of the beneficiary if the beneficiary is  
11 12 the settlor.

11 13 2. Any creditor of the beneficiary as to a distribution to  
11 14 be made upon an event terminating or partially terminating the  
11 15 trust.

11 16 Sec. 24. NEW SECTION. 633.2303 SELF-SETTLED TRUSTS.

11 17 1. If a settlor is a beneficiary of a trust created by the  
11 18 settlor, a transferee or creditor of the settlor may reach the  
11 19 maximum amount that the trustee could pay to or for the  
11 20 settlor's benefit.

11 21 2. In the case of a trust with multiple settlors, the  
11 22 amount the creditor or transferee of a particular settlor may  
11 23 reach shall not exceed the portion of the trust attributable  
11 24 to that settlor's contribution.

11 25 Part 3

11 26 PROVISIONS RELATING TO REVOCABLE TRUSTS

11 27 Sec. 25. NEW SECTION. 633.3101 COMPETENCY TO CREATE,  
11 28 REVOKE, OR MODIFY A REVOCABLE TRUST.

11 29 1. The competency necessary to create, revoke, or modify a  
11 30 revocable trust that contains dispositive provisions upon the  
11 31 death of the settlor is the same as the competency required to  
11 32 make a will. An aggrieved person shall have all causes of  
11 33 action and remedies available to the aggrieved person in  
11 34 attacking the creation, revocation, or modification of a trust  
11 35 as one would if attacking the propriety of the execution of a  
12 1 will.

12 2 2. The level of competency required of a settlor to direct  
12 3 the actions of the trustee, or to contribute property to, or  
12 4 to withdraw property from, a trust is the same as that  
12 5 required to create a revocable trust.

12 6 Sec. 26. NEW SECTION. 633.3102 REVOCATION OR  
12 7 MODIFICATION.

12 8 1. Unless the terms of the trust expressly provide that  
12 9 the trust is irrevocable, the settlor may revoke or modify the  
12 10 trust. This subsection does not apply to trusts created under  
12 11 instruments executed before the effective date of this Act.

12 12 2. Except as otherwise provided by the terms of the trust,  
12 13 if a trust is created or funded by more than one settlor, each  
12 14 settlor may revoke or modify the trust as to the portion of  
12 15 the trust contributed by that settlor.

12 16 3. A trust that is revocable by the settlor may be revoked  
12 17 or modified by any of the following methods:

12 18 a. By compliance with any method specified by the terms of  
12 19 the trust.

12 20 b. Unless the terms of the trust expressly make the method  
12 21 specified exclusive, then either of the following:

12 22 (1) By a writing, other than a will, signed by the settlor  
12 23 and delivered to the trustee during the settlor's lifetime.

12 24 (2) By a later will or codicil expressly referring to the  
12 25 trust and which makes a devise of the property that would  
12 26 otherwise have passed by the terms of the trust.

12 27 4. Upon termination of a revocable trust, the trustee must  
12 28 distribute the trust property as the settlor directs.

12 29 5. The settlor's powers with respect to revocation or  
12 30 modification may be exercised by an agent under a power of  
12 31 attorney only and to the extent the power of attorney  
12 32 expressly so authorizes.

12 33 6. Except to the extent prohibited by the terms of the  
12 34 trust, a conservator may revoke or modify a trust with the  
12 35 approval of the court supervising the conservatorship.

13 1 Sec. 27. NEW SECTION. 633.3103 OTHER RIGHTS OF SETTLOR.

13 2 Except to the extent the terms of the trust otherwise  
13 3 provide, while a trust is revocable and the individual holding  
13 4 the power to revoke the trust is competent, all of the  
13 5 following apply:

13 6 1. The holder of the power, and not the beneficiary, has  
13 7 the rights afforded beneficiaries.

13 8 2. The duties of the trustee are owed to the holder of the  
13 9 power.

13 10 3. The trustee shall follow a written direction given by  
13 11 the holder of the power, or a person to whom the power has  
13 12 been delegated in writing, without liability for so doing, so  
13 13 long as the action by the delegate is authorized by the trust.

13 14 Sec. 28. NEW SECTION. 633.3104 CREDITOR CLAIMS AGAINST  
13 15 REVOCABLE TRUST.

13 16 1. During the lifetime of the settlor, the trust property  
13 17 of a revocable trust is subject to the claims of the settlor's  
13 18 creditors to the extent of the settlor's power of revocation.

13 19 2. Following the death of a settlor, the property of a  
13 20 revocable trust subject to the settlor's power of revocation  
13 21 at the time of death is subject to the claims of the settlor's  
13 22 creditors and costs of administration of the settlor's estate  
13 23 to the extent of the value of the property over which the  
13 24 settlor's power of revocation and the settlor's estate is  
13 25 inadequate to satisfy those claims and costs.

13 26 Sec. 29. NEW SECTION. 633.3105 RIGHTS OF AND CREDITOR  
13 27 CLAIMS AGAINST HOLDER OF GENERAL POWER OF APPOINTMENT.

13 28 1. The holder of a presently exercisable general power of  
13 29 appointment over trust property has the rights of a holder of  
13 30 the power to revoke a trust under section 633.3103 to the  
13 31 extent of the property subject to the power.

13 32 2. Property in trust subject to a presently exercisable  
13 33 general power of appointment is chargeable with the claims of  
13 34 the holder's creditors and costs of administration of the  
13 35 holder's estate to the same extent as if the holder was a  
14 1 settlor and the power of appointment was a power of  
14 2 revocation.

14 3 Sec. 30. NEW SECTION. 633.3106 CHILDREN BORN OR ADOPTED  
14 4 AFTER EXECUTION OF A REVOCABLE TRUST.

14 5 When a settlor fails to provide in a revocable trust for  
14 6 any of the settlor's children born to or adopted by the  
14 7 settlor after the making of the trust, such child, whether  
14 8 born before or after the settlor's death, shall receive a  
14 9 share of the trust equal in value to that which the child  
14 10 would have received under section 633.211, 633.212, or  
14 11 633.219, whichever is applicable, as if the settlor had died  
14 12 intestate, unless it appears from the terms of the trust or  
14 13 decedent's will that such omission was intentional.

14 14 Sec. 31. NEW SECTION. 633.3107 EFFECT OF DIVORCE OR  
14 15 DISSOLUTION.

14 16 1. If, after executing a revocable trust, the settlor is  
14 17 divorced or the settlor's marriage is dissolved, all  
14 18 provisions in the trust in favor of the settlor's spouse are  
14 19 revoked by divorce or dissolution of marriage.

14 20 2. In the event the settlor and spouse remarry each other,  
14 21 the provisions of the revocable trust revoked by the divorce  
14 22 or dissolution of marriage shall be reinstated unless  
14 23 otherwise modified by the settlor.

14 24 Sec. 32. NEW SECTION. 633.3108 LIMITATION ON CONTEST OF  
14 25 REVOCABLE TRUST.

14 26 1. Unless previously barred by adjudication, consent, or  
14 27 other limitation, a proceeding to contest the validity of a  
14 28 revocable trust must be brought no later than one year  
14 29 following the death of the settlor.

14 30 2. Unless the trustee is a party to a pending proceeding  
14 31 contesting its validity, six months following the death of the  
14 32 settlor, the trustee of a revocable trust may assume the  
14 33 trust's validity and proceed to distribute the trust property  
14 34 in accordance with the terms of the trust, without liability  
14 35 for so doing. Liability for an improper distribution in such  
15 1 a case is solely on the beneficiaries.

15 2 3. If notice is given pursuant to section 633.3109, the  
15 3 six month period in subsection 2 is ineffectual and the  
15 4 applicable time period shall be determined by section  
15 5 633.3109.

15 6 Sec. 33. NEW SECTION. 633.3109 NOTICE TO CREDITORS,  
15 7 HEIRS, SPOUSE, AND BENEFICIARIES.

15 8 1. As used in this section, "intestate heir" means only  
15 9 such person as would, in an intestate estate, be entitled to a  
15 10 share under section 633.219, subsection 1, 2, or 3.

15 11 2. A creditor of a deceased settlor of a revocable trust  
15 12 must bring suit to enforce its claim against the assets of the  
15 13 decedent's trust within one year of the decedent's death or be  
15 14 forever barred from collection against the trust assets. If a  
15 15 probate administration is commenced for the decedent and  
15 16 notice is properly given pursuant to section 633.230 or  
15 17 633.304, a creditor's rights shall be determined under those  
15 18 sections and section 633.3104.

15 19 3. If no notice is given to creditors and heirs pursuant  
15 20 to subsection 1, a creditor's rights may be established or  
15 21 terminated if the trustee gives notice as follows:

15 22 a. The trustee shall publish a notice once each week for  
15 23 two consecutive weeks in a daily or weekly newspaper of  
15 24 general circulation published in the county in which the  
15 25 settlor was domiciled.

15 26 b. If the decedent was a nonresident of the county in  
15 27 which some real estate of the trust is located, and at any  
15 28 time during the pendency of the trust administration the  
15 29 trustee has knowledge of the name and address of a person  
15 30 believed to own or possess a claim which will not, or may not,  
15 31 be paid or otherwise satisfied during administration, the  
15 32 trustee shall provide a notice by ordinary mail to each such  
15 33 claimant at the claimant's last known address.

15 34 c. As soon as practicable, the trustee shall give a notice  
15 35 by ordinary mail to the surviving spouse, the intestate heirs  
16 1 of the decedent, and each beneficiary under the trust whose  
16 2 identities are reasonably ascertainable, at such person's last  
16 3 known addresses.

16 4 d. The notice in paragraphs "a", "b", and "c" shall  
16 5 include notification of the decedent's death, and the fact

16 6 that any action to contest the validity of the trust must be  
16 7 brought within the later to occur of sixty days from the date  
16 8 of the second publication of the notice made pursuant to  
16 9 paragraph "a" or thirty days from the date of mailing of the  
16 10 notice pursuant to paragraph "b" or "c". A person who does  
16 11 not make a claim within the appropriate period is forever  
16 12 barred.

16 13 e. The trustee shall give notice to debtors to make  
16 14 payment, and to creditors having claims against the trust  
16 15 assets to mail to the trustee via certified mail, return  
16 16 receipt requested, within the later to occur of sixty days  
16 17 from the second publication of the notice or thirty days from  
16 18 the date of mailing of the notice, or thereafter be forever  
16 19 barred.

16 20 4. The notice described in subsection 3 shall be  
16 21 substantially in the following form:

16 22 To all persons regarding \_\_\_\_\_, deceased, who  
16 23 died on or about \_\_\_\_\_, (year)\_\_\_\_. You are  
16 24 hereby notified that \_\_\_\_\_ is the trustee of the  
16 25 \_\_\_\_\_ Trust. At this time, no probate administration is  
16 26 contemplated with regard to the above-referenced decedent's  
16 27 estate.

16 28 Any action to contest the validity of the trust must be  
16 29 brought in the District Court of \_\_\_\_\_ County,  
16 30 Iowa, within the later to occur of sixty days from the date of  
16 31 second publication of this notice, or thirty days from the  
16 32 date of mailing this notice to all heirs of the decedent,  
16 33 spouse of the decedent, and beneficiaries under the trust  
16 34 whose identities are reasonably ascertainable. Any claim not  
16 35 filed within this period shall be forever barred.

17 1 Notice is further given that all persons indebted to the  
17 2 decedent or to the trust are requested to make immediate  
17 3 payment to the undersigned trustee. Creditors having claims  
17 4 against the trust must mail them to the trustee at the address  
17 5 listed below via certified mail, return receipt requested.  
17 6 Unless creditor claims are mailed by the later to occur of  
17 7 sixty days from the second publication of this notice or  
17 8 thirty days from the date of mailing this notice, a claim  
17 9 shall be forever barred, unless otherwise allowed or paid.

17 10 Dated this \_\_\_\_\_ day of \_\_\_\_\_, (year)\_\_\_\_.  
17 11 \_\_\_\_\_ Trust

17 12 \_\_\_\_\_  
17 13 Trustee

17 14 Address: \_\_\_\_\_

17 15 \_\_\_\_\_

17 16 Date of second publication \_\_\_\_\_ day of \_\_\_\_\_,



17 17 (year) \_\_\_\_.

17 18 5. The claimant either must receive satisfaction of its  
17 19 claim within sixty days of mailing its claim to the trustee,  
17 20 or must file suit against the trust to enforce collection of  
17 21 the creditor's claim. The trustee and creditor may agree to  
17 22 extend the limitations period for filing an action to enforce  
17 23 the claim. If the claimant fails to properly file its claim  
17 24 within the established time period or bring an action to  
17 25 enforce its claim within the established time period, the  
17 26 creditor's claim shall be forever barred.

17 27 Sec. 34. NEW SECTION. 633.3110 RIGHTS OF TRUSTEE  
17 28 REGARDING CLAIMS IN A PROBATE ADMINISTRATION.

17 29 1. If a probate administration has been commenced for  
17 30 which a revocable trust could be held responsible for the  
17 31 payment of claims, expenses, or taxes, the trustee shall be an  
17 32 interested party in that probate administration.

17 33 2. The trustee shall receive notice of all potential  
17 34 charges against the trust assets and must either authorize the  
17 35 payments for which the trust may be found liable or be given  
18 1 the opportunity to dispute or defend any such payment.

18 2 Sec. 35. NEW SECTION. 633.3111 TRUSTEE'S LIABILITY FOR  
18 3 DISTRIBUTIONS.

18 4 1. A trustee who distributes trust assets without making  
18 5 adequate provisions for the payment of creditor claims that  
18 6 are known or reasonably ascertainable shall be jointly and  
18 7 severally liable with the beneficiaries to the extent of the  
18 8 distributions made.

18 9 2. A trustee shall be entitled to indemnification from the  
18 10 beneficiaries for all amounts paid to creditors under this  
18 11 section.

18 12 Part 4  
18 13 TRUST ADMINISTRATION  
18 14 Subpart 1  
18 15 OFFICE OF TRUSTEE

18 16 Sec. 36. NEW SECTION. 633.4101 ACCEPTANCE OR REJECTION  
18 17 OF TRUST BY TRUSTEE.

18 18 1. A person named as trustee accepts the office of trustee  
18 19 by doing one of the following:

18 20 a. Signing the trust instrument, or signing a separate  
18 21 written acceptance.

18 22 b. Except as provided in subsection 3, knowingly accepting  
18 23 delivery of the trust property or exercising powers or  
18 24 performing duties as trustee.

18 25 2. A person named as trustee who has not yet accepted the  
18 26 office of trustee may in writing reject the trust.

18 27 3. If there is an immediate risk of damage to the trust

18 28 property, the person named as trustee may act to preserve the  
18 29 trust property without accepting the office of trustee, if  
18 30 within a reasonable time after acting, the person delivers a  
18 31 written rejection of the trust to the settlor, or if the  
18 32 settlor is dead or lacks capacity, to the beneficiaries  
18 33 eligible to receive income or principal distributions from the  
18 34 trust.

18 35 Sec. 37. NEW SECTION. 633.4102 TRUSTEE'S BOND.

19 1 1. A trustee is not required to give a bond to secure  
19 2 performance of the trustee's duties unless one of the  
19 3 following applies:

19 4 a. A bond is expressly required by the terms of the trust.

19 5 b. A bond is found by the court to be necessary to protect  
19 6 the interests of beneficiaries, regardless of the terms of the  
19 7 trust.

19 8 2. If a bond is required, it must be filed, and be in an  
19 9 amount and with sureties and liabilities as the court may  
19 10 order. The court may excuse a requirement of a bond, reduce  
19 11 or increase the amount of a bond, release a surety, or permit  
19 12 the substitution of another bond with the same or different  
19 13 sureties.

19 14 3. The amount of a bond otherwise required may be reduced  
19 15 by the value of trust property deposited with a financial  
19 16 institution in a manner that prevents its unauthorized  
19 17 disposition, and by the value of real property which the  
19 18 trustee, by express limitation of power, lacks power to convey  
19 19 without court authorization.

19 20 4. Except as otherwise provided by the terms of the trust  
19 21 or ordered by the court, the cost of a bond is charged to the  
19 22 trust.

19 23 5. A bank or trust company shall not be required to give a  
19 24 bond, whether or not the terms of the trust require a bond.

19 25 Sec. 38. NEW SECTION. 633.4103 ACTIONS BY COTRUSTEES.

19 26 Unless the terms of the trust provide otherwise, the  
19 27 following apply to actions of cotrustees:

19 28 1. A power held by cotrustees may be exercised by majority  
19 29 action.

19 30 2. If impasse occurs due to the failure to reach a  
19 31 majority decision, any trustee may petition the court to  
19 32 decide the issue, or a majority of the trustees may consent to  
19 33 an alternative form of dispute resolution.

19 34 3. If a vacancy occurs in the office of a cotrustee, the  
19 35 remaining cotrustees may act for the trust as if they are the  
20 1 only trustees.

20 2 4. If a cotrustee is unavailable to perform duties because  
20 3 of absence, illness, or other temporary incapacity, the

20 4 remaining cotrustees may act for the trust, as if they were  
20 5 the only trustees, if necessary to accomplish the purposes of  
20 6 the trust or to avoid irreparable injury to the trust  
20 7 property.

20 8 Sec. 39. NEW SECTION. 633.4104 VACANCY IN OFFICE OF  
20 9 TRUSTEE.

20 10 A vacancy in the office of trustee exists if any of the  
20 11 following occurs:

- 20 12 1. The person named as trustee rejects the trust.
- 20 13 2. The person named as trustee cannot be identified or  
20 14 does not exist.
- 20 15 3. The trustee resigns or is removed.
- 20 16 4. The trustee dies.
- 20 17 5. A guardian or conservator of the trustee's person or  
20 18 estate is appointed.

20 19 Sec. 40. NEW SECTION. 633.4105 FILLING VACANCY.

20 20 1. For purposes of this section, "adult beneficiaries"  
20 21 shall not include either of the following:

- 20 22 a. Beneficiaries who are not competent and are not  
20 23 represented by a guardian, conservator, or agent.
  - 20 24 b. Beneficiaries who are not entitled or eligible to  
20 25 receive trust income or a distribution of principal were the  
20 26 trust to terminate at the time the agreement is made.
- 20 27 2. A trustee must be appointed to fill a vacancy in the  
20 28 office of the trustee only if the trust has no trustee or the  
20 29 terms of the trust require a vacancy in the office of  
20 30 cotrustee to be filled.

20 31 3. A vacancy in the office of trustee shall be filled  
20 32 according to the following:

- 20 33 a. By the person named in or nominated pursuant to the  
20 34 method specified by the terms of the trust.
- 20 35 b. If the terms of the trust do not name a person or  
21 1 specify a method for filling the vacancy, or if the person  
21 2 named or nominated pursuant to the method specified fails to  
21 3 accept, one of the following methods shall be used:
  - 21 4 (1) By a trust company designated by agreement of the  
21 5 adult beneficiaries specified in subsection 1.
  - 21 6 (2) By majority vote of all adult beneficiaries and the  
21 7 parent or legal guardian of any minor or incompetent  
21 8 beneficiary.
  - 21 9 (3) By a person appointed by the court on petition of an  
21 10 interested person or of a person named as trustee by the terms  
21 11 of the trust. The court, in selecting a trustee, shall  
21 12 consider any nomination made by the adult beneficiaries.

21 13 Sec. 41. NEW SECTION. 633.4106 RESIGNATION OF TRUSTEE.

21 14 1. A trustee who has accepted a trust may resign by any of

21 15 the following methods:

21 16 a. As provided by the terms of the trust.

21 17 b. With the consent of the person holding the power to  
21 18 revoke the trust if the holder is competent or is represented  
21 19 by a guardian, conservator, or agent.

21 20 c. With the consent of the adult beneficiaries as defined  
21 21 in section 633.4105, subsection 1, if the trust is irrevocable  
21 22 or the holder of the power to revoke lacks competency or is  
21 23 not represented by a guardian, conservator, or agent.

21 24 d. Upon written notice to the holder of the power to  
21 25 revoke if the holder substantially changes the trustee's  
21 26 duties and the trustee does not concur.

21 27 e. By filing a petition to resign under section 633.6202.  
21 28 The resignation takes effect ninety days after the filing, or  
21 29 upon approval of the petition by the court, whichever first  
21 30 occurs. The court must accept the trustee's resignation but  
21 31 may impose such orders and conditions as are reasonably  
21 32 necessary for the protection of the trust property, including  
21 33 the appointment of a receiver or temporary trustee.

21 34 2. The liability for acts or omissions of a resigning  
21 35 trustee or of any sureties on the trustee's bond is not  
22 1 released or affected by the trustee's resignation.

22 2 Sec. 42. NEW SECTION. 633.4107 REMOVAL OF TRUSTEE.

22 3 1. A trustee may be removed in accordance with the terms  
22 4 of the trust, by the court on its own motion, or on petition  
22 5 of a settlor, cotrustee, or beneficiary under section  
22 6 633.6202.

22 7 2. The court may remove a trustee, or order other  
22 8 appropriate relief if any of the following occurs:

22 9 a. If the trustee has committed a material breach of the  
22 10 trust.

22 11 b. If the trustee is unfit to administer the trust.

22 12 c. If hostility or lack of cooperation among cotrustees  
22 13 impairs the administration of the trust.

22 14 d. If the trustee's investment performance is consistently  
22 15 and substantially substandard.

22 16 e. If the trustee's compensation is excessive under the  
22 17 circumstances.

22 18 f. For other good cause shown.

22 19 3. If it appears to the court that trust property or the  
22 20 interests of a beneficiary may suffer loss or injury pending a  
22 21 final decision on a petition for removal of a trustee, the  
22 22 court may suspend the powers of the trustee, compel the  
22 23 trustee to surrender trust property to a cotrustee, receiver,  
22 24 or temporary trustee, or order other appropriate relief.

22 25 Sec. 43. NEW SECTION. 633.4108 DELIVERY OF PROPERTY BY

22 26 FORMER TRUSTEE.

22 27 Unless a cotrustee remains in office, a former trustee, or  
22 28 if the trustee's appointment terminated because of death or  
22 29 disability, the former trustee's personal representative or  
22 30 guardian or conservator, is responsible for and has the powers  
22 31 necessary to protect the trust property and other powers  
22 32 essential to the trust's administration until the property is  
22 33 delivered to a successor trustee or a person appointed by the  
22 34 court to receive the property.

22 35 Sec. 44. NEW SECTION. 633.4109 COMPENSATION OF TRUSTEE.

23 1 1. If the terms of the trust do not specify the trustee's

23 2 compensation, a trustee or cotrustee is entitled to

23 3 compensation that is reasonable under the circumstances.

23 4 2. If the terms of the trust specify the trustee's

23 5 compensation, the trustee is entitled to be compensated as so

23 6 provided, except that upon proper showing, the court may allow

23 7 more or less compensation in the following instances:

23 8 a. If the duties of the trustee are substantially

23 9 different from those contemplated when the trust was created.

23 10 b. If the compensation specified by the terms of the trust

23 11 would be inequitable, or unreasonably low or high.

23 12 c. In extraordinary circumstances calling for equitable

23 13 relief.

23 14 Sec. 45. NEW SECTION. 633.4110 REPAYMENT FOR  
23 15 EXPENDITURES.

23 16 A trustee is entitled to be repaid out of the trust

23 17 property, with interest as appropriate, for all of the

23 18 following expenditures:

23 19 1. Expenditures that were properly incurred in the

23 20 administration of the trust.

23 21 2. To the extent that they benefited the trust,

23 22 expenditures that were not properly incurred in the

23 23 administration of the trust.

23 24 Sec. 46. NEW SECTION. 633.4111 NOTICE OF INCREASED  
23 25 TRUSTEE'S FEE.

23 26 1. As used in this section, "trustee's fee" includes a

23 27 trustee's periodic base fee, rate of percentage compensation,

23 28 minimum fee, hourly rate, and transaction charge, but does not

23 29 include fees for extraordinary services.

23 30 2. A trustee shall not charge an increased trustee's fee

23 31 for administration of a trust unless the trustee first gives

23 32 at least thirty days' written notice of the increased fee to

23 33 all of the following beneficiaries:

23 34 a. Each beneficiary who is entitled to an accounting under

23 35 section 633.4213, subsection 6.

24 1 b. Each beneficiary who was given the last preceding

24 2 account.

24 3 c. Each beneficiary who has made a written request to the  
24 4 trustee for notice of an increased trustee's fee, and has  
24 5 given an address for receiving notice by mail.

24 6 3. If a beneficiary files a petition for review of an  
24 7 increased trustee's fee or for removal of a trustee and serves  
24 8 a copy of the petition on the trustee within the thirty-day  
24 9 period, the increased fee does not take effect until otherwise  
24 10 ordered by the court or the petition is dismissed.

24 11 Subpart 2

24 12 FIDUCIARY DUTIES OF TRUSTEE

24 13 Sec. 47. NEW SECTION. 633.4201 DUTY TO ADMINISTER TRUST  
24 14 – ALTERATION BY TERMS OF TRUST.

24 15 1. On acceptance of a trust, the trustee shall administer  
24 16 the trust according to the terms of the trust and according to  
24 17 this trust code, except to the extent the terms of the trust  
24 18 provide otherwise.

24 19 2. The terms of the trust may expand, restrict, eliminate,  
24 20 or otherwise alter the duties prescribed by this trust code,  
24 21 and the trustee may reasonably rely on those terms, but  
24 22 nothing in this trust code authorizes a trustee to act in bad  
24 23 faith or in disregard of the purposes of the trust or the  
24 24 interest of the beneficiaries.

24 25 Sec. 48. NEW SECTION. 633.4202 DUTY OF LOYALTY –  
24 26 IMPARTIALITY – CONFIDENTIAL RELATIONSHIP.

24 27 1. A trustee shall administer the trust solely in the  
24 28 interest of the beneficiaries, and shall act with due regard  
24 29 to their respective interests.

24 30 2. Any transaction involving the trust which is affected  
24 31 by a substantial conflict between the trustee's fiduciary and  
24 32 personal interests is voidable by a beneficiary affected by  
24 33 the transaction unless one of the following applies:

24 34 a. The transaction was expressly authorized by the terms  
24 35 of the trust.

25 1 b. The beneficiary consented to or affirmed the  
25 2 transaction or released the trustee from liability as provided  
25 3 in section 633.4506.

25 4 c. The transaction is approved by the court after notice  
25 5 to interested persons.

25 6 3. A transaction affected by a substantial conflict  
25 7 between personal and fiduciary interests includes any sale,  
25 8 encumbrance, or other transaction involving the trust property  
25 9 entered into by the trustee, the spouse, descendant, agent, or  
25 10 attorney of a trustee, or corporation or other enterprise in  
25 11 which the trustee has a substantial beneficial interest.

25 12 4. A transaction not involving trust property between a

25 13 trustee and a beneficiary which occurs during the existence of  
25 14 the trust or while the trustee retains significant influence  
25 15 over the beneficiary and from which the trustee obtains an  
25 16 advantage is an abuse of a confidential relationship unless  
25 17 the trustee establishes that the transaction was fair.

25 18 5. This section does not apply to any of the following:

25 19 a. An agreement between a trustee and a beneficiary  
25 20 relating to the appointment of the trustee.

25 21 b. The payment of compensation to the trustee, whether by  
25 22 agreement, the terms of the trust, or this trust code.

25 23 c. A transaction between a trust and another trust,  
25 24 decedent's or conservatorship estate of which the trustee is a  
25 25 fiduciary if the transaction is fair to the beneficiaries of  
25 26 the trust.

25 27 Sec. 49. NEW SECTION. 633.4203 STANDARD OF PRUDENCE.

25 28 A trustee shall administer the trust with the reasonable  
25 29 care, skill, and caution as a prudent person would, by  
25 30 considering the purposes, terms, distribution requirements,  
25 31 and other circumstances of the trust.

25 32 Sec. 50. NEW SECTION. 633.4204 COSTS OF ADMINISTRATION.

25 33 A trustee may only incur costs that are reasonable in  
25 34 relation to the trust property, purposes, and other  
25 35 circumstances of the trust.

26 1 Sec. 51. NEW SECTION. 633.4205 SPECIAL SKILLS.

26 2 A trustee who has special skills or expertise, or is named  
26 3 trustee in reliance upon the trustee's representation that the  
26 4 trustee has special skills or expertise, has a duty to use  
26 5 those special skills or expertise.

26 6 Sec. 52. NEW SECTION. 633.4206 DELEGATION.

26 7 1. A trustee shall not delegate to an agent or cotrustee  
26 8 the entire administration of the trust or the responsibility  
26 9 to make or participate in the making of decisions with respect  
26 10 to discretionary distributions, but a trustee may otherwise  
26 11 delegate the performance of functions that a prudent trustee  
26 12 of comparable skills might delegate under similar  
26 13 circumstances.

26 14 2. The trustee shall exercise reasonable care, skill, and  
26 15 caution in the following activities:

26 16 a. Selecting an agent.

26 17 b. Establishing the scope and terms of a delegation,  
26 18 consistent with the purposes and terms of the trust.

26 19 c. Periodically reviewing an agent's overall performance  
26 20 and compliance with the terms of the delegation.

26 21 d. Redressing an action or decision of an agent which  
26 22 would constitute a breach of trust if performed by the  
26 23 trustee.

26 24 3. A trustee who complies with the requirements of  
26 25 subsections 1 and 2 is not liable to the beneficiaries or to  
26 26 the trust for the decisions or actions of the agent to whom a  
26 27 function was delegated.

26 28 4. In performing a delegated function, an agent shall  
26 29 exercise reasonable care to comply with the terms of the  
26 30 delegation.

26 31 5. By accepting the delegation of a trust function from  
26 32 the trustee of a trust that is subject to the law of this  
26 33 state, an agent submits to the jurisdiction of the courts of  
26 34 this state.

26 35 Sec. 53. NEW SECTION. 633.4207 DIRECTORY POWERS.

27 1 1. If the terms of the trust grant a person other than the  
27 2 trustee power to direct certain actions of the trustee, the  
27 3 trustee shall act in accordance with the exercise of the power  
27 4 unless an attempted exercise violates the terms of the trust  
27 5 or the trustee is aware that the attempted exercise violates a  
27 6 fiduciary duty which the person owes the beneficiaries of the  
27 7 trust or the trustee believes or has reason to know that the  
27 8 individual is incompetent.

27 9 2. The holder of a directory power who violates a  
27 10 fiduciary duty owed to the beneficiaries is liable for any  
27 11 loss which results.

27 12 Sec. 54. NEW SECTION. 633.4208 COTRUSTEES.

27 13 1. If a trust has more than one trustee, each trustee  
27 14 shall perform all of the following duties:

27 15 a. Participate in the administration of the trust.

27 16 b. Take reasonable steps to prevent a cotrustee from  
27 17 committing a breach of trust, and to compel a cotrustee to  
27 18 redress a breach of trust.

27 19 2. A trustee who complies with subsection 1 is not liable  
27 20 to the beneficiaries or to the trust for the decisions or  
27 21 actions of a cotrustee.

27 22 Sec. 55. NEW SECTION. 633.4209 CONTROL AND SAFEGUARDING  
27 23 OF TRUST PROPERTY.

27 24 A trustee shall take reasonable steps under the  
27 25 circumstances to take control of and to safeguard the trust  
27 26 property unless it is in the best interests of the trust to  
27 27 abandon or refuse acceptance of the property.

27 28 Sec. 56. NEW SECTION. 633.4210 SEPARATION AND  
27 29 IDENTIFICATION OF TRUST PROPERTY.

27 30 A trustee shall do all of the following:

27 31 1. Keep the trust property separate from other property of  
27 32 the trustee unless the trust provides otherwise.

27 33 2. Cause the trust property to be designated in such a  
27 34 manner that the interest of the trust clearly appears.



27 35 Sec. 57. NEW SECTION. 633.4211 ENFORCEMENT AND DEFENSE  
28 1 OF CLAIMS AND ACTIONS.

28 2 A trustee shall take reasonable steps to enforce claims  
28 3 that are part of the trust property and to defend against  
28 4 actions that may result in a loss to the trust.

28 5 Sec. 58. NEW SECTION. 633.4212 PRIOR FIDUCIARIES.

28 6 A trustee shall take reasonable steps to do all of the  
28 7 following:

28 8 1. Compel a former trustee or other fiduciary to deliver  
28 9 trust property to the trustee.

28 10 2. Redress a breach of trust known to the trustee to have  
28 11 been committed by a prior trustee or other fiduciary.

28 12 Sec. 59. NEW SECTION. 633.4213 DUTY TO INFORM AND  
28 13 ACCOUNT.

28 14 1. A trustee shall keep the beneficiaries of the trust  
28 15 reasonably informed of the administration of the trust.

28 16 2. Within thirty days after accepting the office of the  
28 17 trustee, the trustee shall inform the beneficiaries of the  
28 18 acceptance. Within thirty days after the death of a settlor  
28 19 of a trust, the trustee shall inform the beneficiaries having  
28 20 vested interests of their respective interests in the trust  
28 21 unless the trust specifies otherwise.

28 22 3. A trustee shall inform the beneficiaries in advance of  
28 23 a transaction affecting trust property comprising a  
28 24 significant portion of the value of the trust and whose fair  
28 25 market value is not readily ascertainable.

28 26 4. On reasonable request of a beneficiary, a trustee shall  
28 27 provide the beneficiary with a copy of the trust instrument  
28 28 and with information about matters of administration relevant  
28 29 to the beneficiary's interest unless the trust specifies  
28 30 otherwise.

28 31 5. A trustee shall prepare and send to the beneficiaries  
28 32 an account of the trust property, liabilities, receipts, and  
28 33 disbursements at least annually, at the termination of the  
28 34 trust, and upon a change of a trustee. An accounting on  
28 35 behalf of a former trustee shall be prepared by the former  
29 1 trustee, or if the trustee's appointment terminated by reason  
29 2 of death or incapacity, by the former trustee's personal  
29 3 representative or guardian or conservator.

29 4 6. Copies of accountings and other information required  
29 5 under this section need only be sent to the following  
29 6 beneficiaries:

29 7 a. The beneficiaries defined in section 633.4105.

29 8 b. Each beneficiary who has delivered to the trustee or  
29 9 other fiduciary a written request for a copy of the account or  
29 10 other information.

29 11 7. An accounting and other information required under this  
29 12 section may be waived if the person entitled to a copy  
29 13 consents in writing.

29 14 Sec. 60. NEW SECTION. 633.4214 DUTIES WITH REGARD TO  
29 15 DISCRETIONARY POWERS.

29 16 1. A trustee shall exercise a discretionary power within  
29 17 the bounds of reasonable judgment and in accordance with  
29 18 applicable fiduciary principles and the terms of the trust.

29 19 2. Notwithstanding the use of such terms as "absolute",  
29 20 "sole", or "uncontrolled" in the grant of discretion, a  
29 21 trustee shall act in accordance with fiduciary principles and  
29 22 shall not act in bad faith or in disregard of the purposes of  
29 23 the trust or the power. Absent an abuse of discretion, a  
29 24 trustee's exercise of discretion is not subject to control by  
29 25 a court.

29 26 Subpart 3

29 27 UNIFORM PRUDENT INVESTOR ACT

29 28 Sec. 61. NEW SECTION. 633.4301 SHORT TITLE.

29 29 This subpart may be cited as the "Uniform Prudent Investor  
29 30 Act".

29 31 Sec. 62. NEW SECTION. 633.4302 STANDARD OF CARE –  
29 32 PORTFOLIO STRATEGY – RISK AND RETURN OBJECTIVES.

29 33 1. A trustee shall invest and manage trust property as a  
29 34 prudent investor would, by considering the purposes, terms,  
29 35 distribution requirements, and other circumstances of the  
30 1 trust. In satisfying this standard, the trustee shall  
30 2 exercise reasonable care, skill, and caution.

30 3 2. A trustee's investment and management decisions  
30 4 respecting individual assets must be evaluated not in  
30 5 isolation but in the context of the trust portfolio as a whole  
30 6 and as a part of an overall investment strategy having risk  
30 7 and return objectives reasonably suited to the trust.

30 8 3. A trustee shall consider all of the following  
30 9 circumstances, to the extent relevant to the trust or its  
30 10 beneficiaries in investing and managing trust property:

30 11 a. General economic conditions.

30 12 b. The possible effect of inflation or deflation.

30 13 c. The expected tax consequences of investment decisions  
30 14 or strategies.

30 15 d. The role that each investment or course of action plays  
30 16 within the overall trust portfolio, which may include  
30 17 financial assets, interests in closely held enterprises,  
30 18 tangible and intangible personal property, and real property.

30 19 e. The expected total return from income and the  
30 20 appreciation of capital.

30 21 f. Other resources of the beneficiaries.

30 22 g. Needs for liquidity, regularity of income, and  
30 23 preservation or appreciation of capital.

30 24 h. An asset's special relationship or special value, if  
30 25 any, to the purposes of the trust or to one or more of the  
30 26 beneficiaries.

30 27 4. A trustee shall make a reasonable effort to verify  
30 28 facts relevant to the investment and management of trust  
30 29 property.

30 30 5. A trustee may invest in any kind of property or type of  
30 31 investment consistent with the standards of this subpart.

30 32 Sec. 63. NEW SECTION. 633.4303 DIVERSIFICATION.

30 33 A trustee shall diversify the investments of the trust  
30 34 unless the trustee reasonably determines that the purposes of  
30 35 the trust are better served without diversifying.

31 1 Sec. 64. NEW SECTION. 633.4304 DUTIES AT INCEPTION OF  
31 2 TRUSTEESHIP.

31 3 Within a reasonable time after accepting a trusteeship or  
31 4 receiving trust property, a trustee shall review the trust  
31 5 property and make and implement decisions concerning the  
31 6 retention and disposition of assets, in order to bring the  
31 7 trust portfolio into compliance with the purposes, terms,  
31 8 distribution requirements, and other circumstances of the  
31 9 trust, and with the requirements of this subpart.

31 10 Sec. 65. NEW SECTION. 633.4305 LOYALTY.

31 11 A trustee shall invest and manage the trust property solely  
31 12 in the interest of the beneficiaries.

31 13 Sec. 66. NEW SECTION. 633.4306 IMPARTIALITY.

31 14 If a trust has two or more beneficiaries, the trustee shall  
31 15 act impartially in investing and managing the trust property,  
31 16 taking into account any differing interests of the  
31 17 beneficiaries.

31 18 Sec. 67. NEW SECTION. 633.4307 INVESTMENT COSTS.

31 19 In investing and managing trust property, a trustee may  
31 20 only incur costs that are appropriate and reasonable in  
31 21 relation to the property, the purposes of the trust, and the  
31 22 skills of the trustee.

31 23 Sec. 68. NEW SECTION. 633.4308 REVIEWING COMPLIANCE.

31 24 Compliance with the prudent investor rule is determined in  
31 25 light of the facts and circumstances existing at the time of a  
31 26 trustee's decision or action and not by hindsight.

31 27 Sec. 69. NEW SECTION. 633.4309 DELEGATION OF INVESTMENT  
31 28 AND MANAGEMENT FUNCTIONS.

31 29 1. A trustee may delegate investment and management  
31 30 functions that a prudent trustee of comparable skills could  
31 31 properly delegate under the circumstances. The trustee shall  
31 32 exercise reasonable care, skill, and caution in all of the

31 33 following activities:

31 34 a. Selecting an agent.

31 35 b. Establishing the scope and terms of the delegation,  
32 1 consistent with the purposes and terms of the trust.

32 2 c. Periodically reviewing the agent's actions in order to  
32 3 monitor the agent's performance and compliance with the terms  
32 4 of the delegation.

32 5 2. In performing a delegated function, an agent owes a  
32 6 duty to the trust to exercise reasonable care to comply with  
32 7 the terms of the delegation.

32 8 3. A trustee who complies with the requirements of  
32 9 subsection 1 is not liable to the beneficiaries or to the  
32 10 trust for the decisions or actions of the agent to whom the  
32 11 function was delegated.

32 12 4. By accepting the delegation of a trust function from  
32 13 the trustee of a trust that is subject to the law of this  
32 14 state, an agent submits to the jurisdiction of the courts of  
32 15 this state.

32 16 Sec. 70. NEW SECTION. 633.4310 LANGUAGE INVOKING PRUDENT  
32 17 INVESTOR RULE.

32 18 The following terms or comparable language in the  
32 19 provisions of a trust, unless otherwise limited or modified,  
32 20 authorizes any investment or strategy permitted under this  
32 21 trust code:

32 22 1. Investments permissible by law for investment of trust  
32 23 funds.

32 24 2. Legal investments.

32 25 3. Authorized investments.

32 26 4. Using the judgment and care under the circumstances  
32 27 then prevailing that persons of prudence, discretion, and  
32 28 intelligence exercise in the management of their own affairs,  
32 29 not in regard to speculation but in regard to the permanent  
32 30 disposition of their funds, considering the probable income as  
32 31 well as the probable safety of their capital.

32 32 5. Prudent man rule.

32 33 6. Prudent trustee rule.

32 34 7. Prudent person rule.

32 35 8. Prudent investor rule.

33 1 Subpart 4

33 2 POWERS OF TRUSTEES

33 3 Sec. 71. NEW SECTION. 633.4401 GENERAL POWERS –  
33 4 FIDUCIARY DUTIES.

33 5 1. A trustee, without authorization by the court, may  
33 6 exercise the following powers:

33 7 a. The powers conferred by the terms of the trust.

33 8 b. Except as limited by the terms of the trust, powers

33 9 conferred by this trust code.

33 10 2. This subpart does not affect the power of the court to  
33 11 relieve a trustee from restrictions in the terms of the trust  
33 12 on the exercise of powers, to confer on a trustee additional  
33 13 powers whether or not authorized by the terms of the trust, or  
33 14 to restrict the exercise of a power otherwise given to the  
33 15 trustee by the terms of the trust or this trust code.

33 16 3. The grant of a power to a trustee, whether by the terms  
33 17 of the trust, this trust code, or the court, does not in  
33 18 itself govern the exercise of the power. In exercising a  
33 19 power, the trustee shall act in accordance with fiduciary  
33 20 principles.

33 21 Sec. 72. NEW SECTION. 633.4402 SPECIFIC POWERS OF  
33 22 TRUSTEES.

33 23 In addition to the powers conferred by the terms of the  
33 24 trust, a trustee may perform all actions necessary to  
33 25 accomplish the proper management, investment, and distribution  
33 26 of the trust property, including the following powers:

33 27 1. Collect, hold, and retain trust property received from  
33 28 a settlor or any other person. The property may be retained  
33 29 even though it includes property in which the trustee is  
33 30 personally interested.

33 31 2. Accept or refuse to accept additions to the property of  
33 32 the trust from a settlor or any other person.

33 33 3. Continue or participate in the operation of a business  
33 34 or other enterprise that is part of the trust property and  
33 35 affect an incorporation, dissolution, or other change in the  
34 1 form of the organization of the business or enterprise.

34 2 4. Deposit trust funds in an account in a financial  
34 3 institution, including a financial institution operated by the  
34 4 trustee.

34 5 5. Acquire or dispose of property, for cash or on credit,  
34 6 at public or private sale, or by exchange.

34 7 6. Manage, control, divide, develop, improve, exchange,  
34 8 partition, change the character of, or abandon trust property.

34 9 7. Encumber, mortgage, or pledge trust property for a term  
34 10 within or extending beyond the term of the trust in connection  
34 11 with the exercise of a power vested in the trustee.

34 12 8. Make ordinary or extraordinary repairs, alterations, or  
34 13 improvements in buildings or other trust property; demolish  
34 14 improvements; and raze existing or erect new party walls or  
34 15 buildings.

34 16 9. Subdivide or develop land, dedicate land to public use,  
34 17 make or obtain the vacation of plats and adjust boundaries,  
34 18 adjust differences in valuation on exchange or partition by  
34 19 giving or receiving consideration, and dedicate easements to

34 20 public use without consideration.

34 21 10. Enter into a lease for any purpose as lessor or lessee  
34 22 with or without the option to purchase or renew and for a term  
34 23 within or extending beyond the term of the trust.

34 24 11. Enter into a lease or arrangement for exploration and  
34 25 removal of gas, oil, or other minerals or geothermal energy,  
34 26 and enter into a community oil lease or a pooling or  
34 27 unitization agreement.

34 28 12. Grant an option involving disposition of trust  
34 29 property or take an option for the acquisition of property,  
34 30 including an option that is exercisable beyond the duration of  
34 31 the trust.

34 32 13. With respect to shares of stock of a domestic or  
34 33 foreign corporation, any membership in a nonprofit  
34 34 corporation, or other property, the trustee may do the  
34 35 following:

35 1 a. Vote in person, and give proxies to exercise, any  
35 2 voting rights with respect to the shares, memberships, or  
35 3 property.

35 4 b. Waive notice of a meeting or give consent to the  
35 5 holding of a meeting.

35 6 c. Authorize, ratify, approve, or confirm any action that  
35 7 could be taken by shareholders, members, or property owners.

35 8 14. Pay calls, assessments, and any other sums chargeable  
35 9 or accruing against or on account of securities.

35 10 15. Sell or exercise stock subscription or conversion  
35 11 rights.

35 12 16. Consent, directly or through a committee or other  
35 13 agent, to the reorganization, consolidation, merger,  
35 14 dissolution, or liquidation of a corporation or other business  
35 15 enterprise, and participate in voting trusts, pooling  
35 16 arrangements, and foreclosures, and in connection therewith,  
35 17 deposit securities with and transfer title and delegate  
35 18 discretion to any protective or other committee as the trustee  
35 19 considers advisable.

35 20 17. Hold a security in the name of a nominee or in other  
35 21 form without disclosure of the trust so that title to the  
35 22 security may pass by delivery.

35 23 18. Deposit securities in a securities' depository.

35 24 19. Insure the property of the trust against damage or  
35 25 loss and insure the trustee against liability with respect to  
35 26 third persons.

35 27 20. Borrow money for any trust purpose to be repaid from  
35 28 trust property.

35 29 21. Pay or contest any claim; settle a claim by or against  
35 30 the trust by compromise, arbitration, or otherwise; and

35 31 release, in whole or in part, a claim belonging to the trust.  
35 32 22. Pay taxes, assessments, reasonable compensation of the  
35 33 trustee and of employees and agents of the trust, and other  
35 34 expenses incurred in the collection, care, administration, and  
35 35 protection of the trust.

36 1 23. Make loans out of trust property to a beneficiary on  
36 2 terms and conditions the trustee considers to be fair and  
36 3 reasonable under the circumstances, and guarantee loans to the  
36 4 beneficiary by encumbrances on trust property.

36 5 24. Pay an amount distributable to a beneficiary, whether  
36 6 or not the beneficiary is under a legal disability, by paying  
36 7 the amount to the beneficiary or by paying the amount to  
36 8 another person for the use or benefit of the beneficiary.

36 9 25. Make a distribution of property and money in divided  
36 10 or undivided interests, pro rata or non-pro rata, and adjust  
36 11 resulting differences in valuation.

36 12 26. Employ accountants, attorneys, investment advisors,  
36 13 appraisers, or other persons, even if they are associated or  
36 14 affiliated with the trustee, to advise or assist the trustee  
36 15 in the performance of administrative duties.

36 16 27. Expend trust funds to inspect or investigate property  
36 17 that the trustee has been asked to hold, or property owned or  
36 18 operated by an entity in which the trustee holds or has been  
36 19 asked to hold an interest for the purpose of determining the  
36 20 application of environmental law with respect to the property,  
36 21 and take action to prevent, abate, or otherwise remedy any  
36 22 actual or potential violation of any environmental law  
36 23 affecting property held directly or indirectly by the trustee.

36 24 28. Withhold funds from distribution for the purpose of  
36 25 maintaining a reserve for any valid business purpose, or as a  
36 26 depletion reserve, if, in the trustee's discretion, the  
36 27 failure to do so would unfairly, and materially reduce the  
36 28 value of the interest of the remainder.

36 29 29. Execute and deliver instruments that are useful to  
36 30 accomplish or facilitate the exercise of the trustee's powers.

36 31 30. Prosecute or defend an action, claim, or proceeding in  
36 32 order to protect trust property.

36 33 Subpart 5

36 34 LIABILITY OF TRUSTEES TO BENEFICIARIES

36 35 Sec. 73. NEW SECTION. 633.4501 VIOLATIONS OF DUTIES –  
37 1 BREACH OF TRUST.

37 2 1. A violation by a trustee of a duty the trustee owes a  
37 3 beneficiary is a breach of trust.

37 4 2. The remedies of a beneficiary for breach of trust are  
37 5 exclusively equitable and any action shall be brought in a  
37 6 court of equity.

37 7 Sec. 74. NEW SECTION. 633.4502 BREACH OF TRUST –  
37 8 ACTIONS.

37 9 To remedy a breach of trust which has occurred or may  
37 10 occur, a beneficiary or cotrustee of the trust may request the  
37 11 court to do any of the following:

- 37 12 1. Compel the trustee to perform the trustee's duties.
- 37 13 2. Enjoin the trustee from committing a breach of trust.
- 37 14 3. Compel the trustee to redress a breach of trust by  
37 15 payment of money or otherwise.
- 37 16 4. Appoint a receiver or temporary trustee to take  
37 17 possession of the trust property and administer the trust.
- 37 18 5. Remove the trustee.
- 37 19 6. Reduce or deny compensation to the trustee.
- 37 20 7. Subject to section 633.4603, nullify an act of the  
37 21 trustee, impose an equitable lien or a constructive trust on  
37 22 trust property, or trace trust property wrongfully disposed of  
37 23 and recover the property or its proceeds.

37 24 Sec. 75. NEW SECTION. 633.4503 BREACH OF TRUST –  
37 25 LIABILITY.

37 26 A beneficiary may charge a trustee who commits a breach of  
37 27 trust with the amount required to restore the value of the  
37 28 trust property and trust distributions to what they would have  
37 29 been had the breach not occurred, or, if greater, the amount  
37 30 of profit lost by reason of the breach.

37 31 Sec. 76. NEW SECTION. 633.4504 LIMITATION OF ACTION  
37 32 AGAINST TRUSTEE FOLLOWING FINAL ACCOUNT.

37 33 1. Unless previously barred by adjudication, consent, or  
37 34 other limitation, a claim against a trustee for breach of  
37 35 trust is barred as to a beneficiary who has received a final  
38 1 account or other report adequately disclosing the existence of  
38 2 the claim, unless a proceeding to assert the claim is  
38 3 commenced within one year after the later of the receipt of  
38 4 the account or report or the termination of the trust  
38 5 relationship between the trustee and beneficiary. An account  
38 6 or report adequately discloses the existence of a claim if it  
38 7 provides sufficient information so that the beneficiary knows  
38 8 of the claim or reasonably should have inquired into its  
38 9 existence.

38 10 2. For the purpose of subsection 1, a beneficiary is  
38 11 deemed to have received an account or report in the following  
38 12 instances:

38 13 a. In the case of an adult who is reasonably capable of  
38 14 understanding the account or report, if it is received by the  
38 15 adult personally.

38 16 b. In the case of an adult who is not reasonably capable  
38 17 of understanding the account or report, if it is received by



38 18 the adult's legal representative, including a guardian ad  
38 19 litem or other person appointed for this purpose.

38 20 c. In the case of a minor, if it is received by the  
38 21 minor's guardian or conservator or, if the minor does not have  
38 22 a guardian or conservator, if it is received by a parent of  
38 23 the minor who does not have a conflict of interest.

38 24 3. Any claim for breach of trust against a trustee who has  
38 25 presented a final report to a beneficiary more than one year  
38 26 prior to the effective date of this Act shall be time barred  
38 27 unless some exception stated in this section applies which  
38 28 tolls the statute. Any claim arising under this section  
38 29 within one year of the effective date of the Act shall be time  
38 30 barred after one year unless an exception applies to toll the  
38 31 statute.

38 32 Sec. 77. NEW SECTION. 633.4505 EXCULPATION OF TRUSTEE.

38 33 A provision in the terms of the trust relieving a trustee  
38 34 of liability for breach of trust is unenforceable to the  
38 35 extent that it does either of the following:

39 1 1. Relieves a trustee of liability for breach of trust  
39 2 committed intentionally, with gross negligence, in bad faith,  
39 3 or with reckless indifference to the interest of the  
39 4 beneficiary, or for any profit derived by the trustee from the  
39 5 breach.

39 6 2. Was inserted as the result of an abuse by the trustee  
39 7 of a fiduciary or confidential relationship to the settlor.

39 8 Sec. 78. NEW SECTION. 633.4506 BENEFICIARY'S CONSENT,  
39 9 RELEASE, OR AFFIRMANCE – NONLIABILITY OF TRUSTEE.

39 10 1. A beneficiary shall not hold a trustee liable for a  
39 11 breach of trust if the beneficiary does any of the following:

39 12 a. Consents to the conduct constituting the breach.

39 13 b. Releases the trustee from liability for the breach.

39 14 c. Affirms the transaction constituting the breach.

39 15 2. Notwithstanding the provisions of subsection 1, a  
39 16 beneficiary may hold a trustee liable for breach of trust  
39 17 under either of the following circumstances:

39 18 a. The beneficiary at the time of the consent, release, or  
39 19 affirmance did not know of the beneficiary's rights and of the  
39 20 material facts the trustee knew or should have known and the  
39 21 trustee did not reasonably believe that the beneficiary knew.

39 22 b. The consent, release, or affirmance of the beneficiary  
39 23 was induced by improper conduct of the trustee.

39 24 Subpart 6

39 25 RIGHTS OF THIRD PARTIES

39 26 Sec. 79. NEW SECTION. 633.4601 PERSONAL LIABILITY –  
39 27 LIMITATIONS.

39 28 1. Except as otherwise provided in the contract or in this

39 29 subpart, a trustee is not personally liable on a contract  
39 30 properly entered into in the trustee's fiduciary capacity in  
39 31 the course of administration of the trust unless the trustee  
39 32 fails to reveal the representative capacity or identify the  
39 33 trust in the contract.

39 34 2. A trustee is personally liable for obligations arising  
39 35 from ownership or control of trust property or for torts  
40 1 committed in the course of administering a trust only if the  
40 2 trustee is personally at fault.

40 3 3. A claim based on a contract entered into by a trustee  
40 4 in the trustee's representative capacity, on an obligation  
40 5 arising from ownership or control of trust property, or on a  
40 6 tort committed in the course of administering a trust may be  
40 7 asserted against the trust by proceeding against the trustee  
40 8 in the trustee's representative capacity, whether or not the  
40 9 trustee is personally liable on the claim.

40 10 4. A question of liability as between the trust and the  
40 11 trustee personally may be determined in a proceeding brought  
40 12 under section 633.6202.

40 13 Sec. 80. NEW SECTION. 633.4602 DISSENTING COTRUSTEES.

40 14 1. A cotrustee who does not join in exercising a power is  
40 15 not liable to a third party for the consequences of the  
40 16 exercise of the power.

40 17 2. A dissenting cotrustee who joins in an action at the  
40 18 direction of the majority cotrustees is not liable to a third  
40 19 party for the action if the dissenting cotrustee expresses the  
40 20 dissent in writing to any other cotrustee at or before the  
40 21 action is taken.

40 22 3. This section does not excuse a cotrustee from liability  
40 23 for failure to discharge a cotrustee's duties as a trustee.

40 24 Sec. 81. NEW SECTION. 633.4603 OBLIGATIONS OF THIRD  
40 25 PARTIES.

40 26 1. With respect to a third party dealing with a trustee or  
40 27 assisting a trustee in the conduct of a transaction, if the  
40 28 third party acts in good faith and for a valuable  
40 29 consideration and without knowledge that the trustee is  
40 30 exceeding the trustee's powers or is improperly exercising  
40 31 them, the following apply:

40 32 a. A third party is not bound to inquire as to whether a  
40 33 trustee has power to act or is properly exercising a power and  
40 34 may assume without inquiry the existence of a trust power and  
40 35 its proper exercise.

41 1 b. A third party is fully protected in dealing with or  
41 2 assisting a trustee, as if the trustee has and is properly  
41 3 exercising the power the trustee purports to exercise.

41 4 2. A third party who acts in good faith is not bound to

41 5 ensure the proper application of trust property paid or  
41 6 delivered to the trustee.

41 7 3. If a third party acting in good faith and for a  
41 8 valuable consideration enters into a transaction with a former  
41 9 trustee without knowledge that the person is no longer a  
41 10 trustee, the third party is fully protected as if the former  
41 11 trustee were still a trustee.

41 12 Sec. 82. NEW SECTION. 633.4604 CERTIFICATION OF TRUST.

41 13 1. A trustee may present a certification of trust to any  
41 14 person in lieu of providing a copy of the trust instrument to  
41 15 establish the existence or terms of the trust.

41 16 2. The certification must contain a statement that the  
41 17 trust has not been revoked, modified, or amended in any manner  
41 18 which would cause the representations contained in the  
41 19 certification of trust to be incorrect and must contain a  
41 20 statement that it is being signed by all of the currently  
41 21 acting trustees of the trust and is sworn and subscribed to  
41 22 under penalty of perjury before a notary public.

41 23 3. A certification of trust need not contain the  
41 24 dispositive provisions of the trust which set forth the  
41 25 distribution of the trust estate.

41 26 4. A person may require that the trustee offering the  
41 27 certification of trust provide copies of those excerpts from  
41 28 the original trust instrument and amendments to the original  
41 29 trust instrument which designate the trustee and confer upon  
41 30 the trustee the power to act in the pending transaction.

41 31 5. A person who acts in reliance upon a certification of  
41 32 trust without knowledge that the representations contained in  
41 33 the certification are incorrect is not liable to any person  
41 34 for so acting and may assume without inquiry the existence of  
41 35 the facts contained in the certification. Knowledge shall not  
42 1 be inferred solely from the fact that a copy of all or part of  
42 2 the trust instrument is held by the person relying upon the  
42 3 trust certification. A transaction, and a lien created by a  
42 4 transaction, entered into by the trustee and a person acting  
42 5 in reliance upon a certification of trust is enforceable  
42 6 against the trust assets.

42 7 6. A person making a demand for the trust instrument in  
42 8 addition to a certification of trust or excerpts shall be  
42 9 liable for damages, including attorney fees, incurred as a  
42 10 result of the refusal to accept the certification of trust or  
42 11 excerpts in lieu of the trust instrument if the court  
42 12 determines that the person acted unreasonably in requesting  
42 13 the trust instrument.

42 14 7. This section does not limit the rights of beneficiaries  
42 15 to obtain copies of the trust instrument or rights of others

42 16 to obtain copies in a proceeding concerning the trust.

42 17 Sec. 83. NEW SECTION. 633.4605 LIABILITY FOR WRONGFUL  
42 18 TAKING, CONCEALING, OR DISPOSING OF TRUST PROPERTY.

42 19 A person who, in bad faith, wrongfully takes, conceals, or  
42 20 disposes of trust property is liable for twice the value of  
42 21 the property, attorney fees, court costs, and where consistent  
42 22 with existing law, punitive damages, recoverable in an action  
42 23 by a trustee for the benefit of the trust.

42 24 Subpart 7

42 25 TRUST CONSTRUCTION

42 26 Sec. 84. NEW SECTION. 633.4701 SURVIVORSHIP WITH RESPECT  
42 27 TO FUTURE INTERESTS UNDER TERMS OF TRUST – SUBSTITUTE TAKERS.

42 28 1. Unless otherwise specifically stated by the terms of  
42 29 the trust, the interest of each beneficiary is contingent on  
42 30 the beneficiary's surviving until the date on which the  
42 31 beneficiary becomes entitled to possession or enjoyment of the  
42 32 beneficiary's interest in the trust.

42 33 2. If a beneficiary dies prior to becoming entitled to  
42 34 possession or enjoyment of the beneficiary's interest and the  
42 35 terms of the trust provide for an alternate beneficiary who is  
43 1 living on the date the interest becomes possessory, the  
43 2 alternate beneficiary succeeds to the interest in accordance  
43 3 with the terms of the trust.

43 4 3. If a beneficiary dies prior to becoming entitled to  
43 5 possession or enjoyment of the beneficiary's interest and no  
43 6 alternate beneficiary is named in the trust, and the  
43 7 beneficiary has issue who are living on the date the interest  
43 8 becomes possessory, the issue of the beneficiary who are  
43 9 living on such date shall receive the interest of the  
43 10 beneficiary.

43 11 4. If both a beneficiary of an interest and any alternate  
43 12 beneficiary of that interest named in the trust die prior to  
43 13 the interest becoming possessory, and the beneficiary has no  
43 14 issue who are living on the date the interest becomes  
43 15 possessory, the issue of the alternate beneficiary who are  
43 16 living on such date shall take the interest of the  
43 17 beneficiary.

43 18 5. If both the beneficiary of an interest and any  
43 19 alternate beneficiary of that interest named in the trust die  
43 20 prior to the interest becoming possessory, and neither the  
43 21 beneficiary nor the alternate beneficiary has issue who are  
43 22 living on the date the interest becomes possessory, the  
43 23 beneficiary's interest shall be distributed in accordance with  
43 24 section 633.2106.

43 25 Part 5

43 26 CHARITABLE TRUSTS

43 27 Sec. 85. NEW SECTION. 633.5101 CHARITABLE PURPOSES.

43 28 1. A charitable trust may be created for the relief of  
43 29 poverty, the advancement of education or religion, the  
43 30 promotion of health, or any other purpose the accomplishment  
43 31 of which is beneficial to the community.

43 32 2. If the terms of the trust do not indicate a particular  
43 33 charitable purpose or beneficiaries, the trustee may select  
43 34 one or more charitable purposes or beneficiaries.

43 35 Sec. 86. NEW SECTION. 633.5102 APPLICATION OF CY-PRES.

44 1 Unless the terms of the trust provide to the contrary the  
44 2 following apply:

44 3 1. A charitable trust does not fail, in whole or in part,  
44 4 if a particular purpose for which the trust was created  
44 5 becomes impracticable, unlawful, or impossible to fulfill.

44 6 2. If a particular charitable purpose for which a trust  
44 7 was created becomes impracticable, unlawful, or impossible to  
44 8 fulfill, the court may modify the terms of the trust or direct  
44 9 that the property of the trust be distributed in whole or in  
44 10 part in a manner best meeting the settlor's general charitable  
44 11 purposes. If an administrative provision of a charitable  
44 12 trust becomes impracticable, unlawful, impossible to fulfill,  
44 13 or otherwise impairs the effective administration of the  
44 14 trust, the court may modify the provision.

44 15 Sec. 87. NEW SECTION. 633.5103 TRUST WITH UNECONOMICALLY  
44 16 LOW VALUE.

44 17 1. On petition by a trustee or other interested person, if  
44 18 the court determines that the value of the trust property is  
44 19 insufficient to justify the cost of administration involved,  
44 20 the court may appoint a new trustee or may modify or terminate  
44 21 the charitable trust.

44 22 2. Upon termination of a trust under this section, the  
44 23 court shall distribute the trust property in a manner  
44 24 consistent with the settlor's charitable purposes.

44 25 Sec. 88. NEW SECTION. 633.5104 INTERESTED PERSONS –  
44 26 PROCEEDINGS.

44 27 The settlor, the trustee, the attorney general, and any  
44 28 charitable entity or other person with a special interest in  
44 29 the trust shall be interested persons in a proceeding  
44 30 involving a charitable trust.

44 31 Part 6

44 32 PROCEEDINGS CONCERNING TRUSTS

44 33 Subpart 1

44 34 JURISDICTION AND VENUE

44 35 Sec. 89. NEW SECTION. 633.6101 SUBJECT MATTER

45 1 JURISDICTION.

45 2 1. The court has exclusive jurisdiction of proceedings

45 3 concerning the internal affairs of a trust.

45 4 2. The court has concurrent jurisdiction of actions and  
45 5 proceedings to determine the existence of a trust, actions and  
45 6 proceedings by or against creditors or debtors of trusts, and  
45 7 other actions and proceedings involving trustees and third  
45 8 persons.

45 9 Sec. 90. NEW SECTION. 633.6102 PRINCIPAL PLACE OF  
45 10 ADMINISTRATION OF TRUST.

45 11 1. Unless otherwise designated in the terms of the trust,  
45 12 the principal place of administration of a trust is the usual  
45 13 place where the day-to-day activity of the trust is carried on  
45 14 by the trustee or the trustee's representative who is  
45 15 primarily responsible for the administration of the trust.

45 16 2. If the principal place of administration of the trust  
45 17 cannot be determined under subsection 1, it must be determined  
45 18 as follows:

45 19 a. If the trust has one trustee, the principal place of  
45 20 administration of the trust is the trustee's residence or  
45 21 usual place of business.

45 22 b. If the trust has more than one trustee, the principal  
45 23 place of administration of the trust is the residence or usual  
45 24 place of business of any of the cotrustees as agreed upon by  
45 25 them or, if not, the residence or usual place of business of  
45 26 any of the cotrustees.

45 27 Sec. 91. NEW SECTION. 633.6103 JURISDICTION OVER  
45 28 TRUSTEES AND BENEFICIARIES.

45 29 1. By accepting the trusteeship of a trust having its  
45 30 principal place of administration in this state, the trustee  
45 31 submits personally to the jurisdiction of the court.

45 32 2. To the extent of their interests in the trust, all  
45 33 beneficiaries of a trust having its principal place of  
45 34 administration in this state are subject to the jurisdiction  
45 35 of the court.

46 1 Sec. 92. NEW SECTION. 633.6104 COUNTY OF VENUE.

46 2 1. A proceeding may be commenced in the county in which  
46 3 the trust's principal place of administration is or is to be  
46 4 located and if the trust is created by will, also in the  
46 5 county in which the decedent's estate is administered.

46 6 2. If a trust not created by will has no trustee, a  
46 7 proceeding for appointing a trustee shall be commenced in the  
46 8 county in which a beneficiary resides or the trust property,  
46 9 or some portion of the trust property, is located.

46 10 3. Except as otherwise provided in subsections 1 and 2, a  
46 11 proceeding shall be commenced in accordance with the rules  
46 12 applicable to civil actions generally.

46 13 Sec. 93. NEW SECTION. 633.6105 TRANSFER OF JURISDICTION.

46 14 1. The court may transfer the place of administration of a  
46 15 trust to or from this state or transfer some or all of the  
46 16 trust property to a trustee in or outside this state if it  
46 17 finds any of the following:

46 18 a. The transfer of the trust property to a trustee in this  
46 19 or another jurisdiction, or the transfer of the place of  
46 20 administration of the trust to this or another jurisdiction,  
46 21 will promote the best interests of the trust and those  
46 22 interested in it, taking into account the economical and  
46 23 convenient administration of the trust and the views of the  
46 24 adult beneficiaries.

46 25 b. Any new trustee to whom the trust property is to be  
46 26 transferred is qualified, willing, and able to administer the  
46 27 trust or trust property under the terms of the trust.

46 28 c. If the trust or any portion of the trust property is to  
46 29 be transferred to another jurisdiction and if approval of the  
46 30 transfer by the other court is required under the law of the  
46 31 other jurisdiction, the proper court in the other jurisdiction  
46 32 has approved the transfer.

46 33 2. If a transfer is ordered, the court may direct the  
46 34 manner of transfer and impose terms and conditions as may be  
46 35 just, including a requirement for the substitution of a  
47 1 successor trustee in any pending litigation in this state. A  
47 2 delivery of property in accordance with the order of the court  
47 3 is a full discharge of the trustee with respect to all  
47 4 property embraced in the order.

47 5 3. If the court grants a petition to transfer a trust or  
47 6 trust property to this state, the court shall require the  
47 7 trustee to give bond, if necessary under the law of the other  
47 8 jurisdiction or of this state, and may require bond as  
47 9 provided in section 633.4102.

47 10 Subpart 2

47 11 JUDICIAL PROCEEDINGS CONCERNING TRUSTS

47 12 Sec. 94. NEW SECTION. 633.6201 JUDICIAL INTERVENTION  
47 13 INTERMITTENT.

47 14 The administration of trusts shall proceed expeditiously  
47 15 and free of judicial intervention, except to the extent the  
47 16 jurisdiction of the court is invoked by interested parties or  
47 17 otherwise exercised as provided by law.

47 18 Sec. 95. NEW SECTION. 633.6202 PETITIONS – PURPOSES OF  
47 19 PROCEEDINGS.

47 20 1. Except as otherwise provided in section 633.3103, a  
47 21 trustee or beneficiary of a trust may petition the court  
47 22 concerning the internal affairs of the trust or to determine  
47 23 the existence of the trust.

47 24 2. Proceedings concerning the internal affairs of a trust

- 47 25 include proceedings to do any of the following:
- 47 26 a. Construe and determine the terms of a trust.
  - 47 27 b. Determine the existence of any immunity, power,  
47 28 privilege, duty, or right.
  - 47 29 c. Determine the validity of a trust provision.
  - 47 30 d. Ascertain beneficiaries and determine to whom property  
47 31 shall pass or be delivered upon final or partial termination  
47 32 of the trust.
  - 47 33 e. Settle accounts and pass upon the acts of the trustee,  
47 34 including the exercise of discretionary powers.
  - 47 35 f. Instruct the trustee.
  - 48 1 g. Compel the trustee to report information about the  
48 2 trust or account to the beneficiary.
  - 48 3 h. Grant powers to or modify powers of the trustee.
  - 48 4 i. Fix or allow payment of the trustee's compensation or  
48 5 review the reasonableness of the compensation.
  - 48 6 j. Appoint or remove a trustee.
  - 48 7 k. Accept the resignation of a trustee.
  - 48 8 l. Compel redress of a breach of trust by any available  
48 9 remedy.
  - 48 10 m. Approve or direct the modification or termination of  
48 11 the trust.
  - 48 12 n. Approve or direct the combination or division of  
48 13 trusts.
  - 48 14 o. Authorize or direct transfer of a trust or trust  
48 15 property to or from another jurisdiction.
  - 48 16 p. Determine liability of a trust for debts or the  
48 17 expenses of administration of the estate of a deceased  
48 18 settlor.
  - 48 19 q. Determine any other issue that will aid in the  
48 20 administration of the trust.

48 21 Subpart 3

48 22 SETTLEMENT AGREEMENTS AND REPRESENTATION

48 23 Sec. 96. NEW SECTION. 633.6301 DEFINITION AND  
48 24 APPLICABILITY.

- 48 25 1. For purposes of this subpart, "fiduciary matter"  
48 26 includes any item listed in section 633.6202, subsection 2.
- 48 27 2. Persons interested in a fiduciary matter may approve a  
48 28 judicial settlement and represent and bind other persons  
48 29 interested in the fiduciary matter.
- 48 30 3. Except to the extent the terms of the trust indicate  
48 31 that the procedures specified are not to apply, a person  
48 32 interested in a fiduciary matter may approve a nonjudicial  
48 33 settlement containing such terms and conditions as a court  
48 34 could properly approve and represent and bind other persons  
48 35 interested in the fiduciary matter.



49 1 Sec. 97. NEW SECTION. 633.6302 REPRESENTATION BY HOLDERS  
49 2 OF POWERS.

49 3 1. The holders or all coholders of a power of revocation  
49 4 or presently exercisable general power of appointment,  
49 5 including one in the form of a power of amendment, may  
49 6 represent and bind the persons whose interests, as objects,  
49 7 takers in default, or otherwise, are subject to the power.

49 8 2. To the extent there is no conflict of interest between  
49 9 the holders and the persons represented with respect to the  
49 10 fiduciary matter, persons whose interests are subject to a  
49 11 general testamentary power of appointment may be represented  
49 12 and bound by the holder or holders of the power.

49 13 Sec. 98. NEW SECTION. 633.6303 REPRESENTATION BY  
49 14 FIDUCIARIES AND PARENTS.

49 15 To the extent there is no conflict of interest between the  
49 16 representer and those represented with respect to the  
49 17 fiduciary matter, the following are permitted:

49 18 1. A conservator may represent and bind the person whose  
49 19 estate the conservator controls.

49 20 2. A trustee may represent and bind the beneficiaries of  
49 21 the trust.

49 22 3. A personal representative may represent and bind the  
49 23 persons interested in the decedent's estate.

49 24 4. If no conservator has been appointed, a parent may  
49 25 represent and bind a minor child.

49 26 Sec. 99. NEW SECTION. 633.6304 REPRESENTATION BY HOLDERS  
49 27 OF SIMILAR INTERESTS.

49 28 Unless otherwise represented, a minor or an incompetent,  
49 29 unborn, or unascertained person may be represented by and  
49 30 bound by another person having a substantially identical  
49 31 interest with respect to the fiduciary matter but only to the  
49 32 extent that the person's interest is adequately represented.

49 33 Sec. 100. NEW SECTION. 633.6305 NOTICE OF JUDICIAL  
49 34 SETTLEMENT.

49 35 1. Notice of a judicial settlement shall be given to every  
50 1 interested person or to one who can bind an interested person  
50 2 as described in sections 633.6302 and 633.6303.

50 3 2. Notice may be given to a person or to another who may  
50 4 bind the person.

50 5 3. Notice is given to unborn or unascertained persons who  
50 6 are not represented under sections 633.6302 and 633.6303, by  
50 7 giving notice to all known persons whose interests in the  
50 8 proceedings are substantially identical to those of the unborn  
50 9 or unascertained persons.

50 10 Sec. 101. NEW SECTION. 633.6306 APPOINTMENT OF GUARDIAN  
50 11 AD LITEM.

50 12 1. At any point in a judicial proceeding, the court may  
50 13 appoint a guardian ad litem to represent and approve a  
50 14 settlement on behalf of the interest of a minor, an  
50 15 incapacitated, unborn, or unascertained person, or a person  
50 16 whose identity or address is unknown, if the court determines  
50 17 that representation of the interest otherwise would be  
50 18 inadequate.

50 19 2. If not precluded by conflict of interest, a guardian ad  
50 20 litem may be appointed to represent several persons or  
50 21 interests.

50 22 3. The court shall set out its reasons for appointing a  
50 23 guardian ad litem as a part of the record of the proceeding.

50 24 4. In approving a judicially supervised settlement, a  
50 25 guardian ad litem may consider general family benefit.

50 26 Sec. 102. NEW SECTION. 633.6307 APPOINTMENT OF SPECIAL  
50 27 REPRESENTATIVE.

50 28 1. In connection with a nonjudicial settlement, the court  
50 29 may appoint a special representative to represent the  
50 30 interests of and approve a settlement on behalf of designated  
50 31 persons.

50 32 2. If not precluded by a conflict of interest, a special  
50 33 representative may be appointed to represent several persons  
50 34 or interests.

50 35 3. In approving a settlement, a special representative may  
51 1 consider general family benefit. As a condition for approval,  
51 2 a special representative may require that those represented  
51 3 receive a benefit.

51 4 Sec. 103. Section 262.14, subsection 3, unnumbered  
51 5 paragraph 1, Code 1999, is amended to read as follows:

51 6 Any portion of the funds may be invested by the board. In  
51 7 the investment of the funds, the board shall exercise the  
51 8 judgment and care, under the circumstances then prevailing,  
51 9 which persons of prudence, discretion and intelligence  
51 10 exercise in their own affairs as provided in section 633.123,  
51 11 subsection 1 chapter 633, division XX, part 4, subpart 3.

51 12 Sec. 104. Section 412.4, Code 1999, is amended to read as  
51 13 follows:

51 14 412.4 PAYMENTS AND INVESTMENTS.

51 15 The council, board of waterworks trustees, or other board  
51 16 or commission, whichever is authorized by law to manage and  
51 17 operate any such waterworks, or other municipally owned and  
51 18 operated public utility, shall have the right and power to  
51 19 contract with any legal reserve insurance company, authorized  
51 20 to conduct its business in the state, or any bank located in  
51 21 Iowa having trust powers for the investment of funds  
51 22 contributed to an annuity or pension system, for the payment

51 23 of the pensions or annuities provided in such pension or  
51 24 annuity retirement system, and may pay the premiums or make  
51 25 the contribution of such contract out of the fund provided in  
51 26 section 412.2. Funds contributed to a bank pursuant to such a  
51 27 contract shall be invested in the manner prescribed in section  
51 28 633.123 or 633.123A or chapter 633, division XX, part 4,  
51 29 subpart 3, and may be commingled with and invested as a part  
51 30 of a common or master fund managed for the benefit of more  
51 31 than one public utility.

51 32 Sec. 105. Section 633.123A, subsection 1, unnumbered  
51 33 paragraph 1, Code 1999, is amended to read as follows:

51 34 Notwithstanding any other provision of law, a bank or trust  
51 35 company acting as a fiduciary, in addition to other  
52 1 investments authorized by law for the investment of funds by a  
52 2 fiduciary or by the instrument governing the fiduciary and in  
52 3 the exercise of its investment discretion or at the direction  
52 4 of another person authorized to direct investment of funds  
52 5 held by the fiduciary, may invest and reinvest such funds in  
52 6 the securities of an open-end or closed-end management  
52 7 investment company or investment trust registered under the  
52 8 federal Investment Company Act of 1940, 15 U.S.C. } 80a-1 et  
52 9 seq. Investment and reinvestment under this section is  
52 10 allowed as long as the portfolio of such investment company or  
52 11 investment trust consists substantially of investments not  
52 12 otherwise prohibited by section 633.123 division XX, part 4,  
52 13 subpart 3 of this chapter, or by the governing instrument.

52 14 Sec. 106. Section 633.348, Code 1999, is amended to read  
52 15 as follows:

52 16 633.348 RIGHT TO RETAIN EXISTING PROPERTY.

52 17 Notwithstanding the provisions of section 633.123 division  
52 18 XX, part 4, subpart 3, of this chapter, any personal  
52 19 representative may continue to hold any investment or property  
52 20 originally received by the personal representative and also  
52 21 any increase thereof.

52 22 Sec. 107. Section 633.646, subsection 5, Code 1999, is  
52 23 amended to read as follows:

52 24 5. Notwithstanding the provisions of section 633.123  
52 25 division XX, part 4, subpart 3, of this chapter, to continue  
52 26 to hold any investment or other property originally received  
52 27 by the conservator, and also any increase thereof, pending the  
52 28 timely filing of the first annual report.

52 29 Sec. 108. Section 633.123, Code 1999, is repealed.

52 30 Sec. 109. EFFECTIVE DATE. This Act takes effect July 1,  
52 31 2000.

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BRENT SIEGRIST  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

53 6

53 7

53 8 I hereby certify that this bill originated in the House and  
53 9 is known as House File 663, Seventy-eighth General Assembly.

53 10

53 11

53 12

53 13

ELIZABETH ISAACSON  
Chief Clerk of the House

53 14

53 15 Approved

, 1999

53 16

53 17

53 18

53 19 THOMAS J. VILSACK

53 20 Governor

Text: HF00662

Text: HF00664

Text: HF00600 - HF00699

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Please remember that the person listed above does not vote on bills. Direct all comments concerning legislation to State Legislators.

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