

**LEGISLATIVE PROPOSALS APPROVED  
BY PROBATE AND TRUST SECTION  
FOR INCLUSION IN  
2007 ISBA AFFIRMATIVE LEGISLATIVE AGENDA**

**SUMMARY:**

1. **Fees for extraordinary services in probate:** amend §633.199 to standardize application of this statute throughout the state.
2. **Court officer oath/certification:** amend §633.168 and §633.178 allowing fiduciary to accept oath of office by certification under penalty of perjury (preserving the option of executing the oath in the presence of a notary).
3. **Small estates:** amend chapter 635 allowing any estate with probate assets subject to Iowa jurisdiction with total asset value  $\leq$  \$100,000 to qualify for simplified administration. Improved features include less court involvement and allowing “reasonable” fees for personal representatives and their attorneys.
4. **Marital agreements:** amend chapter 596 to allow husbands and wives to enter valid contracts with each other affecting their assets and income; such contracts can include wills, trusts and other estate planning devices.
5. **Beneficiary revocation for non-probate assets:** add new §§598.20A and 598.20B revoking beneficiary designations to ex-spouse and relatives of ex-spouse for IRAs, life insurance policies, annuities, transfer or payable on death accounts, and stock option plans; makes disposition of these assets consistent with benefit revocation to former spouses and their relatives under probate and trust code amendments enacted in 2005.
6. **Pretermitted heirs:** amend §633.267 (for probated estates) and §633A.3106 (for revocable trusts) to clarify the method of determining an after-born child’s share.
7. **Final disposition directives:** new chapter 144C allows adults to execute enforceable written instruments directing disposition of their human remains after death.
8. **Homestead owners:** add new subsection to §561.1 preserving homestead status for property owned by trusts and occupied by settlor and/or settlor’s spouse.
9. **Fiduciary investment powers:** reinstate §633.123 establishing investment standards for conservators and estate personal representatives (§633.123 was inadvertently repealed in 2000 and needed updating in keeping with modern investment management practices).
10. **Guardianship/Conservatorship fees and costs:** add new subsection to §633.551 authorizing courts to assess attorney and expert witness fees and other costs against the petitioner (instead of the proposed ward) if the guardianship/conservatorship petition is dismissed or denied.
11. **Partial intestacy:** amend §633.272 to provide a surviving spouse with the same share in partial intestacy as would be received in full intestacy; makes this section consistent with spousal elective share amendments enacted in 2005.
12. **Abatement:** amend §633A.4703 to include provision for abating beneficiaries’ shares of revocable trusts if surviving spouse takes elective share of decedent/settlor’s estate.
13. **Annual reports for conservatorships, guardianships and court-supervised trusts:** amend §§633.669, 633.670 and 633.700 making annual reports delinquent if filed more than 90 days following the end of the reporting period.
14. **Small bequests of personal property:** add new subsection to §450.4 eliminating inheritance tax on tangible personal property which is distributed in kind to beneficiaries if the aggregate total value of all such personal property in the estate is  $\leq$  \$5,000.

## **TEXT OF PROPOSED LEGISLATIVE CHANGES:**

### **1. FEES FOR EXTRAORDINARY SERVICES IN PROBATE:**

#### **§633.199 -- Expenses and Extraordinary Services *will be amended as follows:***

Such further allowances as are just and reasonable may be made by the court to personal representatives and their attorneys for actual necessary and extraordinary expenses ~~or~~ and services. Necessary and extraordinary services shall be construed to ~~also~~ include but not be limited to services in connection with real estate, tax ~~matters~~ issues, ~~and litigated~~ disputed matters, non-probate assets, re-opening the estate, location of unknown/lost heirs and beneficiaries, and management and disposition of unusual assets. Relevant factors to be considered to ascertain the value of such services shall include but not be limited to the following:

1. Time necessarily spent by the personal representatives and their attorneys;
2. Nature of the matters/issues and extent of the services provided;
3. Complexity of the issues and their importance to the estate;
4. Responsibilities assumed;
5. Resolution obtained; and
6. Experience and expertise of the personal representatives and their attorneys.

*COMMENT: These additional provisions are intended to provide more guidance on the quality and types of services for which these fees can be awarded, and thereby standardize application of this statute throughout the state.*

### **2. COURT OFFICER OATH/CERTIFICATION**

#### **§633.168 -- Court Officer Oath/Certification -- *amend as follows (including section title change as shown):***

Every fiduciary, before entering upon the duties of the fiduciary's office ~~and within such time as the court or clerk directs~~, shall subscribe an oath or certify under penalties of perjury that the fiduciary will faithfully discharge the duties imposed by law, according to the best of the fiduciary's ability.

#### **§633.178 – Letters -- *amend as follows:***

Upon the filing of an oath of office or certification and a bond, if any is required, the clerk shall issue letters under the seal of the court, giving the fiduciary the powers authorized by law.

*COMMENT: Accepting a fiduciary appointment is the only step in the opening of a probate matter which now requires the fiduciary's signature in the presence of a notary public, and often delays the appointment of the fiduciary and administration of the estate. This change gives fiduciaries the option to sign an oath in the presence of a notary public or to certify under penalty of perjury a promise to faithfully perform the fiduciary duties in compliance with applicable law. The change to §633.178 is needed to implement the change to section 633.168, and authorizes court clerks to issue letters of appointment if the fiduciary accepted the duties of the office under penalty of perjury without signing in the presence of a notary public.*

### **3. SMALL ESTATES**

#### **CHAPTER 635 ADMINISTRATION OF SMALL ESTATES –*amend as follows:***

##### **§635.1 WHEN APPLICABLE.**

~~1. When the gross value of the probate and nonprobate property assets of a decedent subject to the jurisdiction of this state does not exceed fifty one hundred thousand dollars in property subject to taxation under section 450.3, and upon the a petition as provided in section 635.2 of a person as defined by sections 633.227, 633.228 or 633.290, the spouse or a child of the decedent, the clerk shall issue to a resident of the state of Iowa designated by the petitioner letters of appointment of executor or administrator for administration of a small estate to the proposed personal representative named in the petition, if qualified to serve. Unless otherwise provided herein, the provisions of chapter 633 shall apply to estates probated pursuant to this chapter, if either of the following occurs:~~

- ~~a. The decedent dies intestate and is survived by a spouse, or children, or both.~~
- ~~b. The decedent leaves a last will and testament and the only beneficiaries are a spouse, or children, or both.~~

~~2. When the gross value of the probate and nonprobate property of a decedent subject to the jurisdiction of this state does not exceed fifteen thousand dollars in property subject to taxation under section 450.3, upon the petition of a parent or grandchild of the decedent the clerk shall issue to a resident of the state of Iowa designated by the petitioner, letters of appointment as executor or administrator for administration of a small estate if either of the following occurs:~~

- ~~a. The decedent dies intestate without a surviving spouse or children but with a surviving parent or parents or surviving grandchild or grandchildren.~~
- ~~b. The decedent dies without a surviving spouse or children and leaves a last will and testament and the only beneficiaries are a surviving parent or parents or surviving grandchild or grandchildren.~~

~~3. When the entire estate of the decedent does not exceed the sum of ten thousand dollars after deducting the debts, as defined in chapter 450, upon the petition of a person related within the fourth degree of consanguinity to the decedent, the clerk shall issue to a resident of the state of Iowa designated by the petitioner, letters of appointment as executor or administrator for administration of a small estate if either of the following occurs:~~

- ~~a. The decedent dies intestate without a surviving spouse, issue, or parent, but with heirs that are all within the fourth degree of consanguinity.~~
- ~~b. The decedent dies without a surviving spouse, issue, or parent, and leaves a last will and testament and the only beneficiaries are surviving persons related to the decedent within the fourth degree of consanguinity.~~

##### **§635.2 PETITION REQUIREMENTS.**

The petition for administration of a small estate must contain the following:

1. The name, domicile, and date of death of the decedent.
2. The name and address of the surviving spouse, if any, ~~the name and address of each child of the decedent, the name and address of each parent of the decedent, if the parent is an heir or beneficiary of the decedent, and the name and address of each grandchild of the decedent if the grandchild is an heir or beneficiary of the decedent, unless none are beneficiaries under the will of the decedent, and the name and address of each relative within the fourth degree of consanguinity of the decedent who is an heir or beneficiary of the decedent, unless none are beneficiaries under the will of the decedent.~~
3. Whether the decedent died intestate or testate, and, if testate, the date of the Will was executed.

4. A statement that the probate ~~and nonprobate~~ property of the decedent subject to the jurisdiction of this state does not have an aggregate gross value of more than the amount permitted under the provisions of section 635.1.

5. The name and address of the proposed ~~executor or administrator~~ personal representative.

#### ~~635.3 POSSESSION OF ESTATE.~~

~~—The letters of appointment of the executor or administrator of a small estate shall entitle the executor or administrator to possession of any property of the estate.~~

#### ~~635.4 TURNING OVER ASSETS TO EXECUTOR OR ADMINISTRATOR.~~

~~—Any debtor, financial institution or other possessor of property shall deliver to the executor or administrator of a small estate all property of the estate in its possession. The possessor of property shall be exonerated from any liability for the delivery of property to the executor or administrator and shall not be responsible for its disposition after the delivery.~~

#### ~~635.5 TRANSFER OF STOCK OR SECURITIES.~~

~~—The letters of appointment are authority for the transfer of stock or other securities to the persons entitled by law to the stock or other securities as stated to the transfer agent by the executor or administrator for the small estate. The transfer agent shall be exonerated from all liability for making the transfer.~~

#### ~~635.6 PROPERTY OF PERISHABLE NATURE.~~

~~—The executor or administrator of a small estate may sell personal property of a perishable nature and personal property for which there is a regularly established market without order of court.~~

### **§635.13 NOTICE -- CLAIMS.**

If a petition for administration of a small estate of a decedent is granted, the notice as provided in section 633.237, and either sections 633.230 and 633.231 or sections 633.304 and 633.304A shall be given indicate administration as a small estate. Creditors having claims against the estate must file them with the clerk within four months from the second publication of the notice the applicable time periods provided in said notices. The notice has the same force and effect as in chapter 633. Claimants of the estate shall be interested parties of the estate so long as the claims are pending in the estate.

### **§635.7 4 REPORT AND INVENTORY -- EXCESS-VALUE AND TERMINATION CONVERSION.**

1. The executor or administrator personal representative is required to file the report and inventory for which provision is made in section 633.361, including all probate and non-probate assets. Nothing in ~~sections 635.1 to 635.3~~ chapter 635 shall exempt the executor or administrator personal representative from complying with the requirements of section 422.27, 450.22, 450.58, 633.480, or 633.481- , and the administration of an estate whether converted to or from a small estate shall be considered one proceeding under section 633.330.

2. If the inventory and report shows the gross value of probate assets subject to the jurisdiction of this state which exceed ~~the total gross value of~~ the amount permitted ~~the a~~ small estate under ~~the applicable provision of~~ section 635.1, ~~the clerk shall terminate the letters issued under section 635.1 without prejudice to the rights of persons who delivered property as permitted under section 635.3.~~ The executor or administrator shall then be required to petition for administration of the estate shall be administered as provided in chapter 633.

3. If the inventory report in an estate probated pursuant to chapter 633 shows the gross value of the probate assets subject to the jurisdiction of this state does not exceed the amount permitted under

section 635.1, then the estate shall be administered as a small estate upon the filing of a statement by the personal representative that the estate shall be a small estate.

4. Other interested parties may convert proceedings from a small estate to a regular estate or from a regular estate to a small estate only upon good cause shown with approval from the court.

#### **§635.8 5 CLOSING BY SWORN STATEMENT.**

~~1. Unless an interested person petitions for administration of the estate on a basis other than for a small estate within four months after letters of administration for a small estate are issued, if those letters of administration are not terminated under the provisions of section 635.7, any property of the estate shall then be free of debts and charges, unless a claim has been filed as provided in section 635.13. The executor or administrator is personally liable for the payment of debts and charges against the estate to the extent the assets of the estate would be subject to the payment of those debts and charges under estate administration other than a small estate.~~

21. The ~~executor or administrator~~ personal representative shall file with the court a closing statement within ~~six months~~ a reasonable time from the date of issuance of the letters of appointment, and the closing statement shall be verified or affirmed under penalty of perjury, stating all of the following:

a. To the best knowledge of the ~~person~~ personal representative, the gross value of the probate assets ~~estate~~ subject to the jurisdiction of this state does not exceed the amount permitted ~~the small estate~~ under the applicable provision of section 635.1.

b. The estate has been fully administered, ~~dispersed~~ and will be disbursed, and distributed to persons entitled to the estate if no objection is filed to the closing statement after the requisite time period has expired as provided in paragraph 2., and a

c. A description of the disbursement and distribution of the estate including an accurate description of all the real estate of which the decedent died seized, stating the nature and extent of the interest in the real estate and its disposition.

d. A copy of the closing statement and an opportunity to object and request a hearing has been sent by notice, as provided in section 633.40, to all interested parties to all distributees of the estate and to all known creditors and a full account in writing of the administration of the estate has been furnished to the distributees whose interests are affected.

e. The personal representative has complied with all statutory requirements pertaining to taxes, including whether federal estate tax was paid or a return was filed, whether Iowa inheritance tax was paid or a return was filed, whether the decedent's final personal income tax returns were filed, whether fiduciary income tax returns for the estate were filed, and whether a lien continues to exist for any federal or state tax.

32. If no actions or proceedings involving the estate are pending in the court ~~sixty~~ thirty days after the notice of the closing statement is filed, the estate shall close after distribution and ~~the clerk shall discharge the administrator or executor~~ the personal representative shall be discharged.

43. The closing statement shall include a statement as to the amount of fees to be paid for services rendered by the ~~executor or administrator~~ personal representative and the ~~executor's or administrator's~~ personal representative's attorney in administration of the estate. The fees for the ~~executor or administrator~~ personal representative shall not exceed three percent of the gross value of the probate assets of the estate, unless the personal representative itemizes services to the estate. ~~and the~~ The executor's or administrator's personal representative's attorney shall be paid reasonable fees as agreed in writing by the personal representative at or before the time of filing the probate inventory or as approved by the court. All interested parties shall have the opportunity to object and request a hearing as to all fees reported in the closing statement shall not be in excess of the fees permitted by section 633.197.

54. If a closing statement is not filed within twelve months of the date of issuance of the letters of appointment, then an interlocutory report shall be filed within twelve months and provided to all

interested parties, and every six months thereafter, until the closing statement has been filed, unless excused by the court for good cause shown. A closing statement filed under this section has the same effect as final settlement of the estate under chapter 633.

#### ~~635.9 PETITION FOR ADMINISTRATION ON OTHER BASIS~~

~~—At any time within four months after letters of administration are issued for a small estate, any interested person may petition for appointment of an executor or administrator for administration of the an estate other than as a small estate. Other interested parties may convert proceedings from a small estate to a regular estate or from a regular estate to a small estate only upon good cause shown with approval from the Court. In that event the clerk shall notify the person holding letters of appointment for administration of a small estate by ordinary mail not less than ten days before a hearing on the petition. The notice shall be directed to the executor or administrator of the small estate at the executor's or administrator's last known address as reflected in the petition filed under section 635.2 or the report and inventory filed under section 633.361, whichever is filed later.~~

#### ~~635.10 EFFECT OF TERMINATION.~~

~~—If letters of administration of a small estate are terminated, under section 635.7, the time period for estate proceedings under section 633.331 shall apply.~~

#### ~~635.11 STATEMENT IN NOTICE BY CLERK.~~

~~—If a petition for administration of a small estate is filed at the time a will is admitted to probate without administration, the clerk's notice under section 633.305 shall state that a small estate administration is contemplated.~~

#### ~~635.12 SALE OF PROPERTY.~~

~~—The executor or administrator of a small estate may sell property of the estate if the sale is in compliance with sections 633.383 to 633.401 inclusive.~~

#### ~~635.14 MINIMUM TIME BEFORE DISTRIBUTION.~~

~~—The executor or administrator shall not distribute property of the estate not exempt from execution, prior to four months after the issuance of the letters of appointment.~~

*COMMENT: The scope of chapter has been expanded by eliminating previous limitations, increasing the amount to \$100,000, and allowing administration under this chapter even if the aggregate total of probate and non-probate assets exceeds \$100,000. The provisions of the probate code apply unless provided otherwise in these amendments. The petition under 635.2 requires the name of the surviving spouse, if any, and sets forth other necessary petition requirements. Deleting most requirements of the current subsection 2 is intended to expedite the commencement of the proceedings as the heirs and beneficiaries can be named in the inventory to be filed later. Since "personal representative" is defined in 633.3(30) to include the "executor and administrator", the term personal representative is used throughout Chapter 635. The sub-section currently designated as 635.13 will become sub-section 635.3 and will apply claim periods in Chapter 633 and require notice to the medical assistance program. Transferring estates between administration under Chapters 633 and 635 is facilitated by additions to sub-section 635.4 as amended above. Small estates may be concluded and fees approved without court order provided notice and opportunity to be heard is provided to all interested parties and no objection is filed. The provisions of current sub-sections 3, 4, 5, 6, 9, 10, 11, 12, and 14 will be deleted as unnecessary because the provisions of chapter 633 become expressly applicable to small estates under this chapter and other amendments combine various sections.*

## **4. MARITAL AGREEMENTS**

### **CHAPTER 596 – MARITAL AGREEMENTS -- *amend to read as follows:***

#### **§596.1 Definitions**

As used in this chapter:

1. “*Marital Agreement*” means (a) a premarital agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage; or (b) between present spouses, but only if signed by both parties prior to the filing of an action for dissolution of marriage, for legal separation or for separate maintenance, and includes any amendments to a premarital agreement or a Marital Agreement.

2. “*Party*” means any person who has entered into a Marital Agreement.

3. “*Property*” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

#### **§596.2 Construction and application**

This chapter shall be construed and applied to effectuate its general purpose.

#### **§596.3 Short title**

This chapter may be cited as the “*Iowa Marital Agreement Act*”.

#### **§596.4 Formalities**

A Marital Agreement, or any amendment thereto, must be in writing and signed by both parties and is enforceable without consideration. Both parties to the agreement shall execute all documents necessary to enforce the agreement.

#### **§596.5 Content**

1. Parties to a Marital Agreement may contract with respect to the following:
  - a. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
  - b. The right to buy, sell, use, transfer, gift, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
  - c. The disposition of property upon separation, dissolution of the marriage, death, or occurrence or nonoccurrence of any other event;
  - d. The making of a will, trust, or other arrangement to carry out the provisions of the Marital Agreement;
  - e. The ownership rights in a life insurance policy and disposition of the death benefit of such policy;
  - f. The rights and obligations in benefits available or to be available under an employee benefit or retirement plan, except to the extent federal law prevents a binding agreement with respect to such rights and obligations;
  - g. The choice of law governing the construction of the Marital Agreement; and
  - h. Any other matter, including the personal rights and obligations of the parties, not in violation of public policy or a statute imposing a criminal penalty.
2. Notwithstanding any other provision of this chapter, the right of a spouse or child to support shall not be adversely affected by a Marital Agreement.

#### **§596.6 Effective date of agreement**

A Marital Agreement becomes effective upon marriage, if signed by both parties prior to marriage, or upon the effective date stated in the Agreement if signed after marriage. If no such effective date is stated in the Agreement, the Marital Agreement becomes effective upon the signatures of both parties.

### **§596.7 Revocation and Amendment**

1. Revocation. After marriage, a Marital Agreement may be revoked only as follows:

a. By a written agreement signed by both parties. The revocation is enforceable without consideration.

b. To revoke a Marital Agreement without the consent of the other party, the person seeking revocation must prove one or more of the following:

i. The party seeking revocation did not execute the agreement voluntarily;

ii. The agreement was unconscionable when it was executed;

iii. Before the execution of the agreement the party seeking revocation was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; and that party did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or

iv. Before the execution of the agreement the party seeking revocation was not given a reasonable opportunity to obtain independent legal representation with respect to the agreement.

c. If the revocation of one or more provisions of the agreement or the application of the provision to a party is upheld by the court, the revoked provision shall be severed from the remainder of the agreement and shall not affect the provisions, or application of the agreement which can be given effect without the unenforceable provision.

2. Amendment. A Marital Agreement may be amended by a written agreement signed by both parties.

### **§596.8 Enforcement**

1. A Marital Agreement is not enforceable if the person against whom enforcement is sought proves any of the following:

a. The party resisting enforcement did not execute the agreement voluntarily;

b. The agreement was unconscionable when it was executed;

c. Before the execution of the agreement, the party resisting enforcement was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; and that person did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or

d. Before the execution of the agreement, the party resisting enforcement was not given a reasonable opportunity to obtain independent legal representation with respect to the agreement.

2. If a provision of the agreement or the application of the provision to a party is found by the court to be unenforceable for any reason, the provision shall be severed from the remainder of the agreement and shall not affect the provisions, or application of the agreement which can be given effect without the unenforceable provision.

### **§596.9 Unconscionability**

In any action under this chapter to revoke or enforce a Marital Agreement, the issue of unconscionability of a Marital Agreement shall be decided by the court as a matter of law.

### **§596.10 Enforcement --- void marriage**

If a marriage is determined to be void, an agreement that would otherwise have been a Marital Agreement is enforceable only to the extent necessary to avoid an inequitable result.

### **§596.11 Limitation of actions**

Any statute of limitations applicable to an action asserting a claim for relief under a Marital Agreement is tolled during the marriage of the parties. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

### **§596.12 Effective date**

As it relates to premarital agreements, this chapter takes effect on January 1, 1992, and applies to any premarital agreement executed on or after that date, in accordance with the statutory provisions in effect as of the date of the agreement. This chapter does not affect the validity under Iowa law of any premarital agreement entered into prior to January 1, 1992. As it relates to amendments to premarital agreements and Marital Agreements entered into after marriage, this chapter takes effect on July 1, 2007, and is effective for agreements entered into on or after that date.

*COMMENT: The goal of the revisions to this chapter is to allow a husband and wife to enter into valid contracts with each other which affect their assets and income, including wills and trusts and other estate planning devices. If the provisions above are approved, this chapter will apply to premarital agreements executed on or after 1/1/1992; agreements executed prior to that date not affected; and will apply to post-marital agreements executed on or after the effective date of the legislation.*

## **5. BENEFICIARY REVOCATION FOR NON-PROBATE ASSETS**

### **§598.20A – Beneficiary Revocation for Life Insurance [new section]:**

1. Except as preempted by federal law, if a decree of dissolution, annulment or separate maintenance is issued after an insured has designated the insured's spouse, or relatives of the spouse, as a beneficiary under any life insurance policy in force at the date of the decree, a provision in the policy designating the former spouse as beneficiary, or designating the former spouse's relative(s) as beneficiary or beneficiaries is void unless:
  - a. The decree designates the former spouse or relative(s) of the former spouse as beneficiary or beneficiaries; or
  - b. The insured executes a designation of beneficiary form provided by the insurance company naming the former spouse or relative(s) of the former spouse as the beneficiary or beneficiaries after issuance of the decree; or
  - c. The insured and former spouse remarry.
2. If a designation is not effective under subsection 1, the benefits or proceeds from the life insurance policy are payable to the alternate beneficiary, or, if there is no alternate beneficiary, to the estate of the insured.
3. An insurer who pays the benefits or proceeds of a life insurance policy issued by the insurer to the beneficiary under a designation that is void under subsection 1 is not liable for payment of the benefits or proceeds to the person provided in subsection 2 unless:
  - a. Before payment of the benefits or proceeds to the designated beneficiary, the insurer receives written notice at the home office of the insurer at least ten days prior to such payment that the designation of the beneficiary is not effective under subsection 1; and
  - b. The insurer has not interpleaded the benefits or proceeds in a court of competent jurisdiction in accordance with the Iowa Rules of Civil Procedure.
4. Nothing in this section shall be deemed to limit the rights of a beneficiary to seek recovery from any person or entity that wrongly receives the benefits or proceeds of any life insurance policy.
5. This section does not affect the right of a former spouse to assert an ownership interest in a life insurance policy that is not disclosed prior to the decree and is not addressed by the decree.

6. For purposes of this section, “relative(s)” of the former spouse means a person who is related to the former spouse by blood, adoption or affinity, and who, subsequent to a decree, ceased to be related to the insured by blood, adoption or affinity.

*COMMENT: The goal of this section is to apply the same concept to non-probate assets that now applies to probate assets, and will preclude ex-spouses and their relatives from inheriting life insurance proceeds under beneficiary designations executed before a court issues a decree of marriage dissolution, annulment or separate maintenance.*

**§598.20B – Beneficiary Revocation for IRAs, stock option plans, transfer and payable on death accounts, annuities and other contracts [new section]:**

1. Except as preempted by federal law, if a decree of dissolution, annulment or separate maintenance is issued after a participant, annuitant or account holder has designated the spouse or relatives of the spouse of the participant, annuitant or account holder as a beneficiary under an individual retirement account, stock option plan, transfer or payable on death account, or annuity, a provision in the retirement account, stock option plan, transfer or payable on death account, or annuity designating the former spouse as beneficiary, or designating the former spouse’s relative(s) as beneficiary or beneficiaries is void unless:

- a. The decree designates the former spouse or relative(s) of the former spouse as beneficiary or beneficiaries; or
- b. The spouse acting in the capacity of participant, annuitant or account holder executes a designation of beneficiary form provided by the plan or company naming the former spouse or relative(s) of the former spouse as the beneficiary or beneficiaries after issuance of the decree; or
- c. The spouse acting in the capacity of participant, annuitant or account holder and the former spouse remarry.

2. If a designation is void under subsection 1, the benefits or proceeds from the individual retirement account, stock option plan, transfer or payable on death account or annuity are payable to the alternate beneficiary, or, if there is no alternate beneficiary, to the estate of the participant, annuitant or account holder.

3. A business entity, employer, insurer, financial institution, or other person obligated to pay the benefits or proceeds from an individual retirement account, stock option plan, transfer or payable on death account or annuity covered by this section who pays the benefits or proceeds of an individual retirement account, stock option plan, transfer or payable on death account, annuity or other contractual arrangement to the beneficiary under a designation that is void under subsection 1 is not liable for payment of the benefits or proceeds to the person provided by subsection 2 unless:

- a. Before payment of the benefits or proceeds to the designated beneficiary, the business entity, employer, insurer, financial institution, or other person obligated to pay benefits or proceeds receives written notice at the home office of the payer at least ten days prior to such payment that the designation of the beneficiary, transferee or payee is not effective under subsection 1; and
- b. The business entity, employer, insurer, financial institution or other person obligated to pay benefits or proceeds has not interpleaded the benefits or proceeds in a court of competent jurisdiction in accordance with the Iowa Rules of Civil Procedure.

4. Nothing in this section shall be deemed to limit the rights of a beneficiary to seek recovery from any person or entity that wrongfully receives the benefits or proceeds of any individual retirement account, stock option plan, transfer or payable on death account, or annuity.

5. This section does not affect the right of a former spouse to assert an ownership interest in an individual retirement account, stock option plan, transfer on death or payable on death account, or annuity that is undisclosed prior to the decree and which is not addressed in the decree.

6. For purposes of this section, “relative(s)” of the former spouse means a person who is related to the former spouse by blood, adoption or affinity, and who, subsequent to a decree, ceased to be related to the participant, annuitant or account holder by blood, adoption or affinity.

*COMMENT: The goal of this section is to apply the same concept to non-probate assets that now applies to probate assets, and will preclude ex-spouses and their relatives from receiving benefits from individual retirement accounts, stock option plans, transfer on death accounts, payable on death accounts, and annuities under beneficiary designations executed before a court issues a decree of marriage dissolution, annulment, or separate maintenance.*

## **6. PRETERMITTED HEIRS**

### **§633.267 Children born or adopted after execution of will -- amend as follows:**

1. Except as provided in subsection 2, if ~~When~~ a testator fails to provide in the testator's will for any of the testator's children born to or adopted by the testator after ~~the making~~ execution of the testator's last will, such child, whether born before or after the testator's death, shall receive a share in the estate of the testator equal in value to that which the child would have received under section 633.211, 633.212, or 633.219, whichever section or sections are applicable, if the testator had died intestate, unless it appears from the will that such omission was intentional.

2. If the testator is survived by one or more children who were living when the testator's last will was executed and who are all omitted from the will, any child or children born to or adopted by the testator after execution of the will shall not qualify to receive the share set out in subsection 1.

### **§633A.3106 Children born or adopted after execution of a revocable trust will be amended to read as follows:**

1. When a settlor fails to provide in a revocable trust for any of the settlor's children born to or adopted by the settlor after the later of the date of the execution of the trust or its last amendment, and if the settlor dies with a will which is admitted to probate within four months following the date of the settlor's death, such child or children shall receive a share of the trust equal to the amount provided under section 633.267, unless it appears from the terms of the trust or decedent's will that such omission was intentional.

2. When a settlor fails to provide in a revocable trust for any of the settlor's children born to or adopted by the settlor after the later of the date of the execution of the trust or its last amendment and dies intestate, such child or children shall receive a share of the trust equal to the amount provided in section 633.267, unless it appears from the terms of the trust that such omission was intentional.

3. For the purposes of this section and section 633.267 of the Probate Code:

a. For the sole purpose of determining whether a child is entitled to a share of the trust or of the settlor's estate and the amount of such share, the will and trust are to be treated as one document.

b. The share of a child shall be computed on the total value of any trust to which this section applies and of the settlor's estate.

c. Any share payable to a child shall be paid prorata from the settlor's estate and any revocable trust, unless the will or trust instrument provides otherwise.

d. Within each of the will and any revocable trust, each disposition shall abate proportionately, unless the will or trust instrument, as the case may be, provides otherwise.

4. A will of the settlor that is admitted to probate more than four months following the date of the settlor's death shall not affect the distribution of assets under this section.

*COMMENT: Neither the Probate Code's pretermitted heir statute nor the Trust Code's pretermitted heir statute (applicable only to revocable trusts) is sufficiently precise to make clear exactly the share of the omitted child. In addition, the Trust Code provision measures preemption from the date of the making of the trust rather than from the last amendment to the trust. If a settlor has a child at the time of amending the trust, the settlor would include a provision for the child if the settlor intended the child to benefit from the trust. A provision intentionally omitting a child in a will shall also apply to that decedent's revocable trust, thereby furthering the concept throughout the Trust Code that a revocable trust is a will substitute. The will and any revocable trust should be construed together to determine whether after-born or after-adopted children should be entitled to a share of settlor's estate or revocable trust. These amendments are intended to effectuate this concept.*

*Subsection 4 of proposed section 633A.3106 was added to deal with the fact that, with the distribution of the trust assets, there needs to be a relatively quick determination as to whom the beneficiaries are. Trustees need to distribute the trust quickly and need not wait (as the executor does) to complete administration in order to do so. People use trusts so that there will not be undue delay in the distribution of the assets. Four months was chosen somewhat as an estimate of the time necessary to complete the notice procedure under § 633A.3109, as the exact period of notice under that section will not be the same in each trust. The alternate one year period under §633A.3109 was rejected as too long to wait for the distribution of the trust.*

*The following examples illustrate the operation of these proposed amendments:*

*Example 1. Settlor's will devises his entire estate to charity. Settlor's revocable trust provides that the entire trust is distributable to charity (or is held in further trust for a charity) following settlor's death. A child of settlor is alive when the will and trust were executed. An additional child of settlor is born following the execution of the will and trust. The after-born child takes nothing.*

*Example 2. Same facts as Example 1, except no child of the settlor is living on the date of execution of the instruments, the settlor's spouse does not survive settlor, and neither the will nor the trust say anything about children. The after-born child takes the entire estate and trust.*

*Example 3. Same facts as Example 2, except settlor's spouse survives settlor. The after-born child takes nothing.*

*Example 4. Settlor's will pours over settlor's residuary estate into the revocable trust. The revocable trust creates a trust for settlor's spouse for life, on death to testator's children then living. Testator had one child prior to the execution of the will and trust agreement and one born after the execution. Spouse survives. After-born child takes nothing under either this section or section 633.267, but does have an interest in the remainder of the trust if he survives testator's spouse.*

*Example 5. Same facts as Example 1, except spouse does not survive settlor. The result is the same as Example 4. If spouse's death accelerates the remainder, after-born child takes one-half of the combined estate and trust property under the instruments.*

*Example 6. Testator dies intestate, but has a revocable trust providing for distribution to his issue who survive him, per stirpes. The trust includes a provision defining children as including after-born or after-adopted children. Settlor has one child born before the execution of the trust, and one child born and one child adopted after the execution of the trust. All three children take under the trust agreement, not under this section.*

*Example 7. Same facts as Example 1, except the trust instrument contains a provision stating: "I expressly make no provision for any children of mine, whether born before or after the execution of this trust." Any after-born children take nothing from either the settlor's estate or the trust, despite the fact that only the trust and not the will contained the clause negating the statute. This is because the will and trust are read together in determining whether the after-born child takes and the trust provision applies to the estate property also under subsection (c)(1) of this section.*

## **7. FINAL DISPOSITION DIRECTIVES**

### **CHAPTER 144C FINAL DISPOSITIONS DIRECTIVES ACT *[new chapter]*:**

**§144C.1 SHORT TITLE** This chapter may be cited as the “Final Disposition Directives Act”.

**§144C.2 DEFINITIONS.** As used in this chapter, unless the context otherwise requires:

1. “Adult” means a person who is married or who is eighteen years of age or older.
2. “Ceremony” means a formal act or set of formal acts established by custom or authority to commemorate a decedent.
3. “Child” means a son or daughter of a person, whether by birth or adoption.
4. “Decedent” means a deceased adult.
5. “Declarant” means an adult who executes a declaration pursuant to this chapter.
6. “Declaration” means a written instrument, executed by a declarant in accordance with the requirements of this chapter.
7. “Designee” means an adult designated under a declaration to implement the declarant’s decisions contained in the declaration.
8. “Final disposition” means the burial, interment, cremation, removal from the state, or other disposition of remains.
9. “Interested person” means a person’s spouse, parent, grandparent, adult child, adult sibling, adult grandchild, or a designee.
10. “Remains” means the body or cremated remains of a deceased person.
11. *a.* “Third party” means a person who is any of the following:
  - (1) Requested in a declaration to act in reliance upon the declaration.
  - (2) Requested to dispose of remains by the designee under section 5 of this chapter having the right to control the disposition of the declarant's remains.
- b.* “Third party” includes, but is not limited to, a funeral director, funeral establishment, cremation establishment, or cemetery.

### **§144C.3 DECLARATION - FINAL DISPOSITION OF REMAINS**

1. A declaration shall include one or more of the following directives:
  - a.* What final disposition shall be made of the declarant's remains.
  - b.* The person designated to direct final disposition of the declarant's remains.
  - c.* What ceremony, if any, shall be performed after the declarant's death.
  - d.* The person designated to direct arrangements for the ceremony to be performed after the declarant's death.
  - e.* Whether or not an autopsy may be performed, except for those autopsies required under sections 85A.19, 144.56 and 514A.3(1)(j).
  - f.* Any additional directives desired by the declarant.
2. A designee and any third party shall act in good faith to implement the directives of a declaration.
3. A declaration under this chapter shall take precedence over any other instructions or designations made in any other document.

### **§144C.4 RELIANCE - - IMMUNITIES**

1. A designee or third party who relies on a declaration is not subject to civil liability or to criminal prosecution or professional disciplinary action for acting to implement the declaration.
2. A designee or third party who relies on a declaration may presume, in the absence of actual knowledge to the contrary, all of the following:
  - a.* That the declaration was validly executed.

b. That the declarant was competent under 633A.1102(4)(a) at the time the declaration was executed.

3. A designee or third party who relies on a declaration is not subject to civil or criminal liability for the proper application of property delivered or surrendered in compliance with directives contained in the declaration.

4. A third party who has reasonable cause to question the authenticity or validity of a declaration may promptly and reasonably seek additional information from the person proffering the declaration or from other persons to verify the validity of the declaration.

**§144C.5 FINAL DISPOSITION OF REMAINS -- RIGHT TO CONTROL**

1. The right to control final disposition of a person's remains or make arrangements for the ceremony after a person's death vests in the following adult persons, in the following order:

- a. A designee acting pursuant to the person's declaration under Section 3 of this chapter.
- b. The surviving spouse of the person, if not legally separated from the decedent.
- c. A surviving child of the person, or if there are more than one, a majority of the surviving children whose whereabouts are reasonably ascertainable.
- d. The surviving parents of the person whose whereabouts are reasonably ascertainable.
- e. A surviving grandchild of the person, or if there are more than one, a majority of the surviving grandchildren whose whereabouts are reasonably ascertainable.
- f. A surviving sibling of the person, or if there are more than one, a majority of the surviving siblings whose whereabouts are reasonably ascertainable.
- g. A surviving grandparent of the person, or if there are more than one, a majority of the surviving grandparents whose whereabouts are reasonably ascertainable.
- h. A person in the next degree of kinship to the decedent under the rules of inheritance for intestate succession.
- i. The county medical examiner responsible for the person's remains, or if there is no county medical examiner the state medical examiner responsible for the person's remains.

2. A third party may rely upon the directives of a person who represents that the person is a member of a class of persons described in subsection 1, paragraph "c", "e", "f", "g", or "h", and who confirms in writing that there exists no person described in a prior paragraph of subsection 1 and that the person has received the assent of all members of the class of persons to control final disposition of the decedent's remains and to make arrangements for the performance of a ceremony for the decedent.

3. A third party may await a court order before proceeding with final disposition of a person's remains or arrangements for the performance of a ceremony for a person if the third party is aware of a dispute among persons who are members of a class of persons described in subsection 1, or a dispute between persons who are authorized under subsection 1 and the personal representative named in the declarant's will or appointed by the court.

**§144C.6 DECLARATION OF FINAL DISPOSITION OF REMAINS -- FORM -- REQUIREMENTS.**

1. A declaration executed pursuant to this chapter shall be in substantially the following form:

I hereby designate . . . . . as my designee to implement my wishes relating to the final disposition of my remains and the ceremonies to be performed after my death. This declaration hereby revokes all prior declarations or other documents directing final disposition of my remains and the ceremonies to be performed after my death. This designation becomes effective upon my death.

My designee shall act consistently with my directives as stated in this declaration, if any. My designee has the discretion to determine when my directives are impossible or are not lawful or practical. My directives are:

---

I may revoke or amend this declaration at any time. I agree that a third party (such as a funeral or cremation establishment, funeral director, or cemetery) who receives a copy of this declaration shall act in reliance on it. Revocation of this declaration is not effective as to a third party until the third party receives notice of the revocation. My estate shall indemnify my designee and any third party for costs incurred by them or claims arising against them as a result of their reliance on this declaration.

I execute this declaration as my free and voluntary act.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Declarant

The undersigned, on behalf of \_\_\_\_\_,  
hereby acknowledges receipt of a copy of the declaration under section  
144C.3 Code of Iowa, executed by \_\_\_\_\_,  
dated \_\_\_\_\_.

2. A declaration executed pursuant to this chapter shall be in a written form that substantially complies with the form contained in subsection 1, is properly completed, and is dated and signed by the declarant or another person acting on the declarant's behalf at the direction of the declarant. In addition, a declaration shall be either:

*a.* Signed by at least two individuals who are not named therein and who, in the presence of each other and the declarant, witnessed the signing of the declaration by the declarant or another person acting on the declarant's behalf at the direction of the declarant, and witnessed the signing of the declaration by each other, or

*b.* Acknowledged before a notarial officer.

3. A declaration may include specific directives, including but not limited to:

*a.* Special instructions conveying the declarant's wishes for the type of final disposition of the declarant's remains, location of the final disposition, type of ceremony, location of ceremony, and organ donation consistent with Chapter 142C.

*b.* Designation of one or more alternate designees.

*c.* Contact information of designees and alternate designees such as names, addresses, and telephone numbers.

*d.* Instructions for distribution of copies of the declaration.

#### **§144C.7 REVOCATION OF DECLARATION**

1. A declaration or any directive contained in a declaration is revocable by a declarant in a writing which complies with the provisions of subsection 2 of Section 6 of this Chapter.

2. Unless otherwise expressly provided in a declaration:

*a.* A divorce, dissolution of marriage, annulment of marriage, or legal separation between the declarant and the declarant's spouse that occurs subsequent to the execution of the declaration constitutes an automatic

revocation of the spouse as a designee.

- b. A designation of a person as a designee pursuant to a declaration is ineffective if the designation is revoked by the declarant subsequent to the execution of the declaration or if the designee is unable or unwilling to serve as the designee.

#### **§144C.8 FORFEITURE OF DESIGNEE'S AUTHORITY**

A designee shall forfeit all rights and authority under a declaration and all rights and authority under the declaration shall vest in alternate designee, or if there is none, pursuant to Section 5 of this Chapter under either of the following circumstances:

1. The designee is charged with murder in the first or second degree or voluntary manslaughter in connection with the declarant's death and those charges are known to a third party, provided that if the charges against the designee are dismissed or the designee is acquitted of the crime charged, the authority of the designee under the declaration shall be reinstated.
2. The designee does not exercise the designee's authority under the declaration within 24 hours of receiving notification of the death of the declarant or within 40 hours of the declarant's death, whichever is earlier.

#### **§144C.9 INTERSTATE EFFECT OF DECLARATION**

Unless otherwise expressly provided in a declaration:

1. It is presumed that the declarant intended that a declaration executed pursuant to this chapter have the full force and effect of law regardless of the location of the declarant's death.
2. A declaration or similar instrument executed in another state that complies with the requirements of this chapter may be relied upon by a third party in this state so long as a directive of the declarant is not illegal or unconstitutional in this state.

#### **§144C.10 EFFECT OF DECLARATION**

1. The designee designated in a declaration shall have the sole discretion pursuant to the declaration to determine what final disposition of the declarant's remains and ceremonies are to be performed after the declarant's death.
2. The provisions of the most recent declaration executed by a person shall control over any other document concerning final disposition of the person's remains and the ceremony to be performed after the person's death.
3. The costs incurred in implementing a declaration shall be the liability of the declarant's estate.
4. This chapter applies to a declaration executed or exercised in Iowa and to a declaration executed or exercised by a person who is a resident of Iowa when the instrument is executed or exercised.
5. This chapter does not prohibit an interested person from conducting a separate ceremony not specified in the declaration, at the interested person's expense.
6. The rights of a donee created by an anatomical gift pursuant to Section 142C.11 are superior to the authority of a designee under a declaration executed pursuant to this chapter.

#### **§523I.309 INTERMENT, RELOCATION , OR DISINTERMENT OF REMAINS -- *will be amended to read as follows:***

1. A person who represents that the person knows the identity of a decedent and, in order to procure the interment, relocation or disinterment of a decedent's remains, signs an order or statement, other than a death certificate, that warrants the identity of the decedent is liable for all damages that result, directly or indirectly, from that representation.

2. In the event of a dispute concerning the right to control the interment, relocation, or disinterment of a decedent's remains, the dispute may be resolved by a court of competent jurisdiction. A cemetery or entity maintaining a columbarium shall not be liable for refusing to accept the decedent's remains, relocate or disinter, inter, or otherwise dispose of a decedent's remains, until the cemetery or entity maintaining a columbarium receives a court order or other suitable confirmation that the dispute has been resolved or settled.

3. *a.* If good cause exists to relocate or disinter remains interred in a cemetery, the remains may be removed from the cemetery pursuant to a disinterment permit as required under section 144.34, with the written consent of the cemetery, the current interment rights owners, and the person entitled to control the interment, relocation, or disinterment of the decedent's remains under section 144C.5.

*b.* If the consent required by subsection (a) cannot be obtained, but not because of a refusal by anyone required to consent under subsection 3a, the remains may be relocated or disinterred only by order of the district court of the county in which the cemetery is located upon a finding by the court by clear and convincing evidence of good cause to relocate or disinter the remains. Before the date of application to the court for permission to relocate or disinter remains under this subsection, notice must be given to the cemetery in which the remains are interred, each person whose consent is required for relocation of the remains under subsection 3a, and any other person that the court requires to be served.

*c.* For the purposes of this subsection, personal notice must be given not later than the eleventh day before the date of hearing on an application to the court for permission to relocate or disinter the remains, or notice by certified mail or restricted certified mail must be given not later than the sixteenth day before the date of hearing.

*d.* This subsection does not apply to the removal or disinterment of remains from one interment space to another interment space in the same cemetery to correct an error, or relocation of the remains by the cemetery from an interment space for which the purchase price is past due and unpaid, to another suitable interment space.

4. A person who removes remains from a cemetery shall keep a record of the removal, and provide a copy to the cemetery, that includes all of the following:

*a.* The date the remains are removed.

*b.* The name of the decedent and age at death if those facts can be conveniently obtained.

*c.* The place to which the remains are removed.

*d.* The name of the cemetery and the location of the interment space from which the remains are removed.

5. A cemetery may disinter and relocate remains interred in the cemetery for the purpose of correcting an error made by the cemetery after obtaining a disinterment permit as required by section 144.34. The cemetery shall provide written notice describing the error to the commissioner and to the person who has the right to control the interment, relocation, or disinterment of the remains erroneously interred, by restricted certified mail at the person's last known address and sixty days prior to the disinterment. The notice shall include the location where the disinterment will occur and the location of the new interment space. A cemetery is not civilly or criminally liable for an erroneously made interment that is corrected in compliance with this subsection unless the error was the result of gross negligence or intentional misconduct.

6. Relocations and disinterments of human remains interred in a cemetery shall be done in compliance with sections 144.32 and 144.34. Relocations of human remains held in a columbarium shall be done in compliance with the rules and regulations of the entity maintaining the columbarium.

**§144.34 DISINTERMENT – PERMIT -- *will be amended to read as follows:***

Disinterment of a dead body or fetus shall be allowed for the purpose of autopsy or reburial only, and then only if accomplished by a funeral director. A permit for such disinterment and, thereafter, reinterment shall be issued by the state registrar according to rules adopted pursuant to chapter 17A or when ordered by the district court of the county in which such body is buried. The

state registrar, without a court order, shall not issue a permit without the consent of the person entitled to control the interment, relocation, or disinterment of the decedent's remains under section 144C.5. Disinterment for the purpose of reburial may be allowed by court order only upon a showing by clear and convincing evidence of substantial benefit to the public. Disinterment for the purpose of autopsy or reburial by court order shall be allowed only when reasonable cause is shown that someone is criminally or civilly responsible for such death, after hearing, upon reasonable notice prescribed by the court to the surviving spouse or in the spouse's absence, death, or incapacity, the next of kin. Due consideration shall be given to the public health, the dead, and the feelings of relatives.

**§144.56 AUTOPSY -- *will be amended to read as follows:***

An autopsy or post-mortem examination may be performed upon the body of a deceased person by a physician whenever the written consent to the examination or autopsy has been obtained by any of the persons described in section 144C.5(1), in order of priority set forth therein. This section does not apply to any death investigated under the authority of sections 331.802 to 331.804.

**§142.1 DELIVERY OF BODIES -- *will be amended to read as follows:***

The body of every person dying in a public asylum, hospital, county care facility, penitentiary, or reformatory in this state, or found dead within the state, or which is to be buried at public expense in this state, except those buried under the provisions of chapter 144C or 249, and which is suitable for scientific purposes, shall be delivered to the medical college of the state university, or some osteopathic or chiropractic college or school located in this state, which has been approved under the law regulating the practice of osteopathy or chiropractic; but no such body shall be delivered to any such college or school if the deceased person expressed a desire during the person's last illness that the person's body should be buried or cremated, nor if such is the desire of the person's relatives. Such bodies shall be equitably distributed among said colleges and schools according to their needs for teaching anatomy in accordance with such rules as may be adopted by the Iowa department of public health. The expense of transporting said bodies to such college or school shall be paid by the college or school receiving the same. In the event the deceased person has not expressed a desire during the person's last illness that the person's body should be buried or cremated and should have no relatives that request the person's body for burial or cremation, if a friend objects to the use of the deceased person's body for scientific purposes, said deceased person's body shall be forthwith delivered to such friend for burial or cremation at no expense to the state or county. Unless such friend provides for burial and burial expenses within five days, the body shall be used for scientific purposes under this chapter.

**§142C.4(1)(a) -- *will be amended to read as follows:***

A designee acting pursuant to the donor's declaration under Chapter 144C.

**§331.804(1) DISPOSITION OF BODY AND OTHER PROPERTY -- *will be amended to read as follows:***

1. After an investigation has been completed, including an autopsy if one is performed, the body shall be prepared for transportation. The body shall be transported by a funeral director, if chosen by the person having the right to control final disposition of a person's remains under section 144C.5(1), for burial or other appropriate disposition. A medical examiner shall not use influence in favor of a particular funeral director. However, if a person other than a funeral director assumes custody of a dead body, the person shall secure a burial-transit permit pursuant to section 144.32. If no one claims a body, it shall be disposed of as provided in chapter 142.

**§331.802(3)(h) -- *will be amended to read as follows:***

Death of a person if the body is not claimed by the person under section 144C.5 holding the right to control final disposition of the person's remains, or a friend.

**§331.802(8) -- will be amended to read as follows:**

Where donation of the remains of the deceased to a medical school or similar institution equipped with facilities to perform autopsies is provided by will or by the person under section 144C.5 holding the right to control final disposition of the person's remains, any autopsy under this section shall be performed at the direction of the school or institution, and in such a manner as to further the purpose of the donation, while serving the public interest.

**APPLICABILITY DATES:**

1. This Act applies to all declarations executed on or after the effective date of chapter 144C.
2. The section of chapter 144C creating section 144C.5 applies to all deaths occurring on or after the effective date of said chapter, except that section 144C.5, subsection 1, paragraph "a", applies only to a designee designated in a declaration that is executed on or after the effective date of chapter 144C.
3. All declarations executed prior to the effective date of Chapter 144C which substantially comply with the requirements of Chapter 144C shall be given full force and effect.

*COMMENT: This proposal creates new Code chapter 144C, titled "Final Disposition Directives Act", which allows an adult to execute an enforceable written instrument called a declaration which expresses the wishes of the person concerning the final disposition of that person's human remains upon death, and the ceremonies to be performed after that person's death and designates who should oversee those matters.*

*The proposal requires a declaration to contain at least one of several directives: what final disposition should be made of the declarant's remains, who is designated to direct the final disposition of the remains, what ceremony should be performed after the declarant's death, and who is designated to direct arrangements for the ceremony. Included in the proposed statute is suggested (not mandatory) language to be used for a declaration.*

*Among the more important provisions of this proposal are immunity from civil or criminal liability or professional disciplinary action for a designee or a third party (such as a funeral director, funeral establishment, cremation establishment, or cemetery) acting in reliance on a declaration. The proposal also allows these third parties to await a court order before proceeding with the final disposition of the body or ceremony arrangements in the event of a dispute among family members or between family members and the personal representative under the decedent's will or appointed by the court.*

*This proposal also establishes the order of priority for determining who has the right to control final disposition of a person's remains or to make arrangements for a ceremony after a person's death. A designee acting pursuant to a declaration has the highest priority, or if there is no designee, then the surviving spouse and other relatives of the deceased person.*

*Finally, this proposal provides for forfeiture of a designee's rights and authority under a declaration if the designee is charged with murder in the first or second degree or voluntary manslaughter of the declarant or if the designee's rights and authority under the declaration are not exercised within the earlier of twenty-four (24) hours of receiving notification of the death of the declarant or forty (40) hours of the declarant's death.*

*This proposal also makes it clear that "interested person(s)" (such as a declarant's spouse, parent, grandparent, adult child, adult sibling, adult grandchild) at their own expense may conduct a separate ceremony not specified in the declaration.*

*Coordinating amendments to Code chapters 523I, 144, 142, 142C, and 331 are included in this proposal to fully implement chapter 144C.*

## **8. HOMESTEAD PROTECTION**

### **§561.1 “Homestead” defined – *add new sub-section 2:***

1. The homestead must embrace the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.

2. As used in this chapter, the word “owner” includes but is not limited to the person, or the surviving spouse of the person, occupying the homestead as a beneficiary of a trust that includes the property in the trust estate.

*COMMENT: Recent litigation in Florida and other states prompted this proposal to protect the homestead status of property owned by revocable trusts and occupied by the settlor and/or settlor’s spouse.*

## **9. FIDUCIARY INVESTMENT POWERS**

### **633.123 Prudent investment by fiduciaries [new section]:**

1. **Investments by fiduciaries.** When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property for the benefit of another, the fiduciary shall consider those factors identified in Section 633A.4302 which are relevant to the type of account being administered.

2. **Special considerations.** In addition to the factors identified in Section 633A.4302, the fiduciary shall consider the following factors:

- a. The length of time the fiduciary will have control over the estate assets and the anticipated cost of complying with the standards of this section.
- b. The unique nature of:
  1. The duties of a personal representative or conservator;
  2. The assets, income, expenses and distribution requirements of the estate; and
  3. The needs and rights of the beneficiaries or ward.
- c. The express provisions of a Will, Codicil, or other controlling instrument.

3. **Estates.** The standards identified in this section will be applied differently than similar standards for investment and management of trust property. Special consideration must be given to the expected term of estates. Because some estates will have limited duration, there may be situations when no investment or change in investment is warranted.

*COMMENT: Probate code section 633.123 was inadvertently repealed in 2000, leaving no investment management standards fiduciaries. This proposal was drafted in keeping with the trust code prudent investor standards, with adaptive provisions appropriate for conservatorships and estates.*

## **10. GUARDIANSHIP/CONSERVATORSHIP FEES AND COSTS**

### **§633.551 Guardianships and conservatorships--general provisions -- [new sub-section]:**

(5) Except as otherwise provided in sections 633.672 and 633.673, in proceedings to establish a guardianship or conservatorship, the costs, including attorney fees and expert witness fees, shall be assessed against the ward or the ward's estate unless the proceeding is dismissed either voluntarily or involuntarily, in which case fees and costs may be assessed against the petitioner.

*Comment: Provisions of the existing section authorize a judge to assess the costs of involving attorneys and expert witnesses and other costs (including court costs) only against the ward. So if someone petitions the court to open a guardianship and/or conservatorship, and the petition is not granted, there's no statutory authority for deciding who should pay these expenses. Example: Mary's son petitions to become his mother's conservator, but Mary and her Able Attorney convince the judge she's competent to manage her financial affairs, so the conservatorship is not opened. In this example, a judge could require Mary's son (the petitioner) to pay these expenses.*

## **11. PARTIAL INTESTACY**

### **633.272 Partial Intestacy -- will be amended as follows:**

If part but not all of the estate of a decedent is validly disposed of by will, the part not disposed of by will shall be distributed as provided herein for intestate estates. If the testator left a surviving spouse, and the spouse does not ~~elect to take against the will~~ take an elective share, the spouse shall receive, in addition to the property given to the spouse by the will, all so much of the intestate property ~~which shall be subject to the payment of its proportionate share of debts and charges against the estate as the spouse would receive under section 633.211 or 633.212.~~

*COMMENT: These changes are necessary to make this section consistent with the other spousal share changes enacted in 2005, and to provide the surviving spouse with the same share in partial intestacy as would be provided in full intestacy.*

## **12. ABATEMENT**

### **§633A.4703 – GENERAL ORDER ~~FOR~~ OF ABATEMENT – will be amended (including section title) as follows:**

Except as otherwise provided by the governing instrument, where necessary to abate shares of the beneficiaries of a trust for the payment of debts and charges, federal and state estate taxes, bequests, the share of the surviving spouse who takes an elective share, and the shares of children born or adopted after the execution of the trust, abatements will occur in the following order:

...

4. Notwithstanding subsections 1, 2, or 3, a disposition in favor of the ~~grantor's settlor's~~ surviving spouse who does not take an elective share shall not be abated where such abatement would have the effect of increasing the amount of federal estate or federal gift taxes payable by a person or an entity.

*COMMENT: Spousal elective share provisions of the probate code (§633.236 et seq.) were amended in 2005 to include revocable trusts in elective shares. A surviving spouse who makes such an election takes a share which is different from (and usually more valuable than) the grantor's intended disposition, so elective shares should not be protected from abatement for the payment of the decedent's debts and estate administration costs. This proposal amends the trust code abatement provisions to clarify that only surviving spouses who do not take elective shares will be protected from abatement. This proposal does not change operation of the principle that surviving spouses' shares will not be abated if doing so would increase the federal estate or gift taxes due from the estate, and*

also corrects an inadvertent error (replacing “grantor” with “settlor”, the term used throughout the trust code).

### **13. GUARDIANSHIP/CONSERVATORSHIP ANNUAL REPORTS**

#### **§633.669 Reporting requirements – assistance by clerk – subsection 1 will be amended as follows:**

1. A guardian appointed under this chapter shall file with the court the following written verified reports:

...

b. An annual report within ninety days of the close of the reporting period, unless the court otherwise orders on good cause shown.

#### **§633.670. Inventory - reporting requirements -- subsection 1(b)(1) will be amended as follows:**

1. A conservator appointed under this chapter shall file with the court:

...

b. Written verified reports and accountings as follows:

1. Annually, within ninety days of the close of the reporting period, unless the court otherwise orders on good cause shown.

#### **§633.700. Intermediate report of trustees will be amended as follows:**

Unless specifically relieved from so doing, by the instrument creating the trust, or by order of the court, the trustee shall make a written report, under oath, to the court, once each year within ninety days of the close of the reporting period, and more often, if required by the court. Such report shall state:

...

*COMMENT: Delinquency notices are sent on June 1<sup>st</sup> and December 1<sup>st</sup> every year to guardians, conservators, and trustees of trusts subject to ongoing court supervision under the probate code. Those whose reporting periods end May 31<sup>st</sup> or November 30<sup>th</sup> have less than 24 hours to file a report to avoid a delinquency notice. This proposal allows guardians, conservators and trustees subject to court supervision and their attorneys to avoid delinquency notices if they file their annual reports less than 90 days after the end of their reporting periods. We hope this will reduce the workload of court clerks issuing delinquency notices, and give fiduciaries who must wait for statements from financial institutions adequate time to prepare their reports.*

### **14. SMALL BEQUESTS OF PERSONAL PROPERTY**

#### **§450.4 EXEMPTIONS – [new subsection 9]:**

The tax imposed by this chapter shall not be collected:

...

9. On the value of tangible personal property as defined in section 633.276 which is distributed in kind from the estate if the aggregate of all such personal property in the estate does not exceed \$5,000.

*COMMENT: This proposal will exempt estate beneficiaries from paying inheritance tax on small bequests of personal property which they receive in kind from personal representatives, but only if the total value of all personal property in the estate is  $\leq$  \$5,000.*