



THOMAS J. VILSACK  
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON  
LT. GOVERNOR

March 29, 2004

The Honorable Chester Culver  
Secretary of State  
State Capitol Building  
LOCAL

Dear Mr. Secretary:

I hereby transmit:

**Senate File 2070**, an Act relating to duties and activities of the State Department of Transportation, including the registration and titling of motor vehicles, regulation of electric personal assistive mobility devices, and issuance of commercial driver's licenses, and providing effective dates.

**Senate File 2118**, an Act regarding public utility rights-of-way and providing an effective date.

**Senate File 2167**, an Act relating to the Iowa Probate Code, including provisions relating to estate recovery of medical assistance benefits, the power to disclaim property interests, and trusts.

**Senate File 2199**, an Act relating to residential landlord-tenant law, by making certain changes concerning family violence and domestic abuse.

The above Senate Files are hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Vilsack".

Thomas J. Vilsack  
Governor

TJV:jmc

cc: Secretary of the Senate  
Chief Clerk of the House





SENATE FILE 2167

AN ACT

RELATING TO THE IOWA PROBATE CODE, INCLUDING PROVISIONS  
RELATING TO ESTATE RECOVERY OF MEDICAL ASSISTANCE BENEFITS,  
THE POWER TO DISCLAIM PROPERTY INTERESTS, AND TRUSTS.

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

Section 1. Section 249A.3, subsection 11, paragraph c,  
Code Supplement 2003, is amended to read as follows:

c. A disclaimer of any property, interest, or right  
pursuant to section ~~633.704~~ 633.704E constitutes a transfer of  
assets for the purpose of determining eligibility for medical  
assistance in an amount equal to the value of the property,  
interest, or right disclaimed.

Sec. 2. Section 633.356, subsection 1, unnumbered  
paragraph 1, Code 2003, is amended to read as follows:

When the gross value of the decedent's personal property  
does not exceed twenty-five thousand dollars and there is no  
real property or the real property passes to persons exempt  
from inheritance tax pursuant to section 450.9 as joint  
tenants with right of survivorship, and if forty days have  
elapsed since the death of the decedent, the successor of the  
decedent as defined in subsection 2 may, by filing an  
affidavit prepared pursuant to subsection 3 or 8, and without  
procuring letters of appointment, do any of the following with  
respect to one or more particular items of personal property:

Sec. 3. Section 633.356, subsection 3, paragraph a, Code  
2003, is amended to read as follows:

a. The decedent's name, social security number, and the  
date and place of the decedent's death.

Sec. 4. Section 633.356, subsection 4, unnumbered paragraph 3, Code 2003, is amended to read as follows:

Judgments rendered by any court in this state and mortgages belonging to a decedent whose personal property is being distributed pursuant to this section may, without prior order of court, be released, discharged, or assigned, in whole or in part, as to any particular property, and deeds may be executed in performance of real estate contracts entered into by the decedent, where an affidavit made pursuant to subsection 3 or 8 is filed in the office of the county recorder of the county wherein any judgment, mortgage, or real estate contract appears of record.

Sec. 5. Section 633.356, subsection 7, unnumbered paragraph 1, Code 2003, is amended to read as follows:

If the requirements of this section are satisfied, receipt by the holder of the decedent's property of the affidavit under subsection 3 or 8 constitutes sufficient acquittance for the payment of money, delivery of property, or transferring the registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any statement in the affidavit.

Sec. 6. Section 633.356, subsection 8, Code 2003, is amended to read as follows:

8. a. When a deceased distributee is entitled to money or property claimed in an affidavit presented under this section with respect to a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person identified by the affidavit as the successor of the deceased distributee to the extent that the court determines that the deceased distributee was entitled to the money or property under the will or the laws of intestate succession.

b. When the department of human services is entitled to money or property of a decedent pursuant to section 249A.5, subsection 2, and no affidavit has been presented by a

successor of the decedent as defined in subsection 2, within ninety days of the date of the decedent's death, the funds in the account, up to the amount of the claim of the department, shall be paid to the department upon presentation by the department or an entity designated by the department of an affidavit to the holder of the decedent's property. Such affidavit shall include the information specified in subsection 3, except that the department may submit proof of payment of funeral expenses as verification of the decedent's death instead of a certified copy of the decedent's death certificate. The amount of the department's claim shall also be included in the affidavit, which shall entitle the department to receive the funds as a successor of the decedent. The department shall issue a refund within sixty days to any claimant with a superior priority pursuant to section 633.425, if notice of such claim is given to the department, or to the entity designated by the department to receive notice, within one year of the department's receipt of funds.

Sec. 7. Section 633.647, subsection 7, Code 2003, is amended to read as follows:

7. To exercise the right to disclaim on behalf of the ward as provided in section ~~633.704~~ 633.704E.

Sec. 8. NEW SECTION. 633.704A SHORT TITLE.

This division shall be known and may be cited as the "Iowa Uniform Disclaimer of Property Interest Act".

Sec. 9. NEW SECTION. 633.704B DEFINITIONS.

For purposes of this division, the following definitions shall apply:

1. "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

2. "Disclaimed interest" means the interest the disclaimant refuses to accept that would have passed to the disclaimant had the disclaimer not been made.

3. "Disclaimer" means the refusal to accept an interest in or power over property.

4. "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

5. "Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

6. "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

7. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes any Indian tribe or band, or Alaskan village, recognized by federal law or formally acknowledged by a state.

8. "Trust" means any of the following:

a. An express trust, charitable or noncharitable, with additions thereto, whenever and however created.

b. A trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

Sec. 10. NEW SECTION. 633.704C SCOPE.

This division applies to disclaimers of any interest in or power over property, whenever and however created.

Sec. 11. NEW SECTION. 633.704D TAX QUALIFIED DISCLAIMER.

Notwithstanding any other provision of this division, any disclaimer or transfer that meets the requirements of section 2518 of the Internal Revenue Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, for the purpose of being a tax qualified disclaimer with the effect that the disclaimed or transferred interest is treated as never having been transferred to the disclaimant is effective as a disclaimer under this division.

Sec. 12. NEW SECTION. 633.704E POWER TO DISCLAIM -- GENERAL REQUIREMENTS -- WHEN IRREVOCABLE.

1. A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whenever and however acquired. A person may

disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

2. Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this state or by the instrument creating the fiduciary relationship, or a disclaimer by a fiduciary would be a breach of trust, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if the creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

3. To be effective, a disclaimer must be in writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in section 633.704L. In this subsection, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

4. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

5. A disclaimer becomes irrevocable when it is delivered or filed pursuant to section 633.704L or when it becomes effective as provided in sections 633.704F through 633.704K, whichever occurs later.

6. A disclaimer made under this division is not a transfer, assignment, or release.

Sec. 13. NEW SECTION. 633.704F EFFECT OF DISCLAIMER OF INTEREST IN PROPERTY.

1. As used in this section:

a. "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

b. "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

2. Except for a disclaimer governed by section 633.704G or 633.704H, the following rules apply to a disclaimer of an interest in property:

a. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

b. The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

c. If the instrument does not contain a provision described in paragraph "b", the following rules shall apply:

(1) If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(2) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

d. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant of the preceding interest is not accelerated in possession or enjoyment.

e. For purposes of this section, if an individual disclaims a future interest not held in trust, the disclaimed future interest passes as if that interest had been held in trust.

Sec. 14. NEW SECTION. 633.704G DISCLAIMER OF RIGHTS OF SURVIVORSHIP IN JOINTLY HELD PROPERTY.

1. Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of the following:

a. A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates.

b. All of the property, except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

2. A disclaimer under subsection 1 takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

3. An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Sec. 15. NEW SECTION. 633.704H DISCLAIMER OF INTEREST BY TRUSTEE.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

Sec. 16. NEW SECTION. 633.704I DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY.

If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules shall apply:

1. If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

3. The instrument creating the power is construed as if the power expired when the disclaimer became effective.

Sec. 17. NEW SECTION. 633.704J DISCLAIMER BY APPOINTEE, OBJECT, OR TAKER IN DEFAULT OF EXERCISE OF POWER OF APPOINTMENT.

1. For purposes of this section, all of the following rules shall apply:

a. An appointee is a person to whom a holder of a power has effectively appointed the property subject to the power.

b. An object of a power is a person to whom a holder of a power may appoint the property subject to the power sometime in the future.

c. A taker in default of the exercise of a power of appointment is a person designated by the person creating the



power in the holder to take the property subject to the power if the power has not been effectively exercised.

2. A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

3. A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

Sec. 18. NEW SECTION. 633.704K DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY.

1. If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

2. If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

3. A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

Sec. 19. NEW SECTION. 633.704L DELIVERY OR FILING.

1. For the purposes of this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of any of the following:

- a. An annuity or insurance policy.
- b. An account with a designation for payment on death.
- c. A security registered in beneficiary form.
- d. A pension, profit-sharing, retirement, or other employment-related benefit plan.
- e. Any other nonprobate transfer at death.

2. Subject to subsections 3 through 12, delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

3. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, the following shall apply:

a. A disclaimer must be delivered to the personal representative of the decedent's estate.

b. If no personal representative is then serving, a disclaimer must be filed with a court having jurisdiction to appoint the personal representative.

4. In the case of an interest in a testamentary trust, one of the following shall apply:

a. A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate.

b. If no personal representative is then serving, a disclaimer shall be filed with a court having jurisdiction to enforce the trust.

5. In the case of an interest in an inter vivos trust, one of the following shall apply:

a. A disclaimer must be delivered to the trustee then serving.

b. If no trustee is then serving, a disclaimer must be filed with a court having jurisdiction to enforce the trust.

c. If a disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

6. In the case of a disclaimer of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

7. In the case of a disclaimer of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, the disclaimer must be delivered to the person obligated to distribute the interest.

8. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

9. In the case of a disclaimer by an object or taker in default of an exercise of a power of appointment at any time after the power was created, one of the following shall apply:

a. The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power.

b. If no fiduciary is then serving, the disclaimer must be filed with a court having authority to appoint the fiduciary.

10. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, one of the following shall apply:

a. The disclaimer must be delivered to the holder, the personal representative of the holder's estate, or to the fiduciary under the instrument that created the power.

b. If no fiduciary is then serving, the disclaimer must be filed with a court having authority to appoint the fiduciary.

11. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection 3, 4, or 5, as if the power disclaimed were an interest in property.

12. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

13. In addition to the foregoing, all of the following shall apply:

a. A copy of any instrument of disclaimer affecting real estate shall be filed in the office of the county recorder of the county where the real estate is located. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

b. A copy of an instrument of disclaimer, regardless of its subject, may be filed with the clerk of court of the county in which proceedings for administration have been commenced, if applicable.

Sec. 20. NEW SECTION. 633.704M WHEN DISCLAIMER BARRED OR LIMITED.

1. A disclaimer is barred by a written waiver of the right to disclaim.

2. A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

a. The disclaimant accepts the interest sought to be disclaimed.

b. The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so.

c. A judicial sale of the interest sought to be disclaimed occurs.

3. A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

4. A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

5. A disclaimer is barred or limited if so provided by law other than this division.

6. A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this division had the disclaimer not been barred.

Sec. 21. NEW SECTION. 633.704N DIVISION SUPPLEMENTED BY OTHER LAW.

1. Unless displaced by a provision of this division, the principles of law and equity supplement this division.

2. This division does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this division.

Sec. 22. NEW SECTION. 633.704O MEDICAL ASSISTANCE ELIGIBILITY.

A disclaimer of any property, interest, or right pursuant to the provisions of this division constitutes a transfer of assets for the purpose of determining eligibility for medical assistance under chapter 249A in an amount equal to the value of the property, interest, or right disclaimed.

Sec. 23. NEW SECTION. 633.704P APPLICATION TO EXISTING RELATIONSHIP.

Except as otherwise provided in section 633.704M, an interest in or power over property existing on the effective date of this Act as to which the time for delivering or filing a disclaimer under law superseded by this division has not expired may be disclaimed after the effective date of this Act.

Sec. 24. NEW SECTION. 633.704Q SEVERABILITY.

If any provision of this division or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of the division which can be given effect without the invalid provisions or application, and to this end, the provisions of the division are severable.

Sec. 25. Section 633.1102, subsection 17, Code Supplement 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. m. Burial, funeral, and perpetual care trusts.

Sec. 26. Section 633.1105, Code Supplement 2003, is amended to read as follows:

633.1105 TRUST PROVISIONS CONTROL.

The provisions terms of a trust shall always control and take precedence over any section of this trust code to the contrary. If a provision term of the trust instrument modifies or makes any section of this trust code inapplicable to a the trust, the common law shall apply to any issues raised by such provision term.

Sec. 27. Section 633.2301, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

633.2301 SPENDTHRIFT PROTECTION RECOGNIZED.

Except as otherwise provided in section 633.2302, all of the following provisions shall apply:

1. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfers of the beneficiary's interest.

2. a. A creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the required distribution date.

b. For the purposes of this subsection, "mandatory distribution" means a distribution required by the express terms of the trust of any of the following:

(1) All of the income, net income, or principal of the trust.

(2) A fraction or percentage of the income or principal of the trust.

(3) A specific dollar amount from the trust.

c. A distribution that is subject to a condition shall not be considered a mandatory distribution.

3. If a creditor or assignee of a beneficiary is permitted to reach a mandatory distribution under this section, the sole remedy of the creditor or assignee shall be to apply to the court having jurisdiction of the trust after such reasonable period of time has expired for a judgment ordering the trustee to pay to the creditor or the assignee a sum of money equal to the lesser of the amount of the debt or assignment, or the amount of the mandatory distribution described in subsection 2. No other remedy, including but not limited to, attachment or garnishment of any interest in the trust, recovery of court costs or attorney fees, or placing a lien of any type on any trust property or on the interest of any beneficiary in the trust, shall be permitted or ordered by any court. Any writing signed by the beneficiary allowing any remedy other than payment of the mandatory distribution not made to the beneficiary within a reasonable time after the required distribution date shall be void and shall not be enforced by any court.

4. A creditor or assignee of a beneficiary of a spendthrift trust shall not compel a distribution that is subject to the trustee's discretion if any of the following apply:

a. The distribution is expressed in the form of a standard of distribution.

b. The trustee has abused its discretion.

Sec. 28. Section 633.2302, Code 2003, is amended to read as follows:

633.2302 EXCEPTIONS TO SPENDTHRIFT PROTECTION.

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

~~1. Any creditor of the beneficiary if the beneficiary is the settlor.~~

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

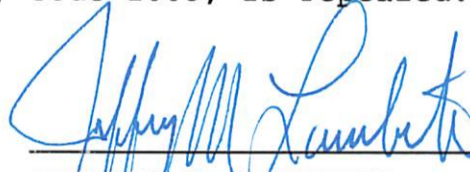
Sec. 29. NEW SECTION. 633.4507 ATTORNEY FEES AND COSTS.

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

Sec. 30. NEW SECTION. 633.4702 DISCRETIONARY LANGUAGE PREVAILS OVER OTHER STANDARD.

In the absence of clear and convincing evidence to the contrary, language in a governing instrument granting a trustee discretion to make or withhold a distribution shall prevail over any language in the governing instrument indicating that the beneficiary may have a legally enforceable right to distributions or indicating a standard for payments or distributions.

Sec. 31. Section 633.704, Code 2003, is repealed.



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JEFFREY M. LAMBERTI

President of the Senate



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CHRISTOPHER C. RANTS

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2167, Eightieth General Assembly.



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MICHAEL E. MARSHALL

Secretary of the Senate

Approved March 29, 2004



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THOMAS J. VILSACK

Governor