



THOMAS J. VILSACK  
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON  
LT. GOVERNOR

May 1, 2003

The Honorable Chester Culver  
Secretary of State  
State Capitol Building  
LOCAL

Dear Mr. Secretary:

I hereby transmit:

**Senate File 366**, an Act relating to the Iowa Probate Code, including provisions relating to state inheritance, gift taxes, and trusts and including an applicability date provision.

The above Senate File is 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 366

AN ACT

RELATING TO THE IOWA PROBATE CODE, INCLUDING PROVISIONS RELATING TO STATE INHERITANCE, GIFT TAXES, AND TRUSTS AND INCLUDING AN APPLICABILITY DATE PROVISION.

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

Section 1. Section 450.1, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

450.1 DEFINITIONS -- CONSTRUCTION.

1. For purposes of this chapter, unless the context otherwise requires:

a. "Internal Revenue Code" means the same as defined in section 422.3.

b. "Person" includes plural as well as singular, and artificial as well as natural persons.

c. "Personal representative" means an administrator, executor, or trustee as each is defined in section 633.3.

d. "Real estate or real property" for the purpose of appraisal under this chapter means real estate which is the land and appurtenances, including structures affixed thereto.

e. "Stepchild" means the child of a person who was married to the decedent at the time of the decedent's death, or the child of a person to whom the decedent was married, which person died during the marriage to the decedent.

2. This chapter shall not be construed to confer upon a county attorney authority to represent the state in any case, and the county attorney shall represent the department of revenue and finance only when specially authorized by the department to do so.

Sec. 2. Section 450.2, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

450.2 TAXABLE ESTATES AND PROPERTY.

The following estates and property and any interest in or income from any of the following estates and property, which pass from the decedent owner in any manner described in this chapter, are subject to tax as provided in this chapter:

1. Real estate and tangible personal property located in this state regardless of whether the decedent was a resident of this state at death.

2. Intangible personal property owned by a decedent domiciled in this state.

Sec. 3. Section 450.3, subsection 2, Code 2003, is amended to read as follows:

2. By deed, grant, sale, gift, or transfer made within three years of the death of the grantor or donor, which is not a bona fide sale for an adequate and full consideration in money or money's worth and which is in excess of the annual gift tax exclusion allowable for each donee under section 2503, subsections b (b) and e (e), of the Internal Revenue Code. If both spouses consent, a gift made by one spouse to a person who is not the other spouse is considered, for the purposes of this subsection, as made one half by each spouse under the same terms and conditions provided for in section 2513 of the Internal Revenue Code. The net market value of a transfer described in this subsection shall be the net market value determined as of the date of the transfer.

Sec. 4. Section 450.20, unnumbered paragraph 1, Code 2003, is amended to read as follows:

~~It~~ The department of revenue and finance shall also keep a separate record of any deferred estate upon which the tax due is not paid within-fifteen-months-from on or before the last day of the ninth month after the death of the decedent, showing substantially the same facts as are required in other cases, and also showing:

Sec. 5. Section 633.527, Code 2003, is amended to read as follows:

633.527 LIMITATION OF APPLICATION.

Sections 633.523, 633.524 and 633.526 shall not apply in the case of wills, living trusts, deeds, or contracts of

insurance, or other contracts wherein provision has been made for distribution of property different from the provisions of said those sections.

Sec. 6. Section 633.1102, subsection 3, Code 2003, is amended to read as follows:

3. "Competency" means any one of the following:

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

b. In the case of an irrevocable transfer, "competency" means the ~~degree-of-understanding-required-to-execute-a~~ contract ability to understand the effect the gift may have on the future financial security of the donor and anyone who may be dependent on the donor.

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

Sec. 7. Section 633.1105, Code 2003, is amended to read as follows:

633.1105 TRUST PROVISIONS CONTROL.

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

Sec. 8. NEW SECTION. 633.1108 GOVERNING LAW.

1. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which at the time the trust was created the settlor was domiciled, had a place of abode, or was a national.

2. The meaning and effect of the terms of the trust not created by will shall be determined by any of the following:

a. Except as provided in paragraph "c", the law of the jurisdiction designated in the terms of the trust, on the condition that at the time the trust was created the designated jurisdiction had a substantial relationship to the trust. A jurisdiction has a substantial relationship to the trust if it is the residence or domicile of the settlor or of

any qualified beneficiary, the location of a substantial portion of the assets of the trust, or a place where the trustee was domiciled or had a place of business.

b. Except as provided in paragraph "c", in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction that has the most significant relationship to the matter at issue.

c. As to real property, the law of the jurisdiction where the real property is located.

Sec. 9. Section 633.2102, Code 2003, is amended to read as follows:

633.2102 REQUIREMENTS FOR VALIDITY.

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

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

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

c. The trust has a definite beneficiary or a beneficiary who will be definitely ascertained within the period of the applicable rule against perpetuities, unless the trust is a charitable trust, an honorary trust, or a trust for pets.

d. The trustee has duties to perform.

~~2. A-definite-or-definitely-ascertainable-beneficiary includes-a-beneficiary-or-class-of-beneficiaries-designated under-a-power-to-select-the-beneficiaries-granted-by-the-terms of-the-trust-to-the-trustee-or-another-person.~~ A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property passes to the person or persons who would have taken the property had the power not been conferred.

3. A trust is not merged or invalid because a person, including but not limited to the settlor of the trust, is or may become the sole trustee and the sole holder of the present beneficial interest in the trust, provided that one or more other persons hold a beneficial interest in the trust, whether such interest be vested or contingent, present, or future, and whether created by express provision of the instrument or as a result of reversion to the settlor's estate.

Sec. 10. Section 633.2103, subsections 2 and 3, Code 2003, are amended to read as follows:

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

a. Before or at the time of the declaration.

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

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

a. By the settlor, concurrently with or before the transfer.

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

Sec. 11. Section 633.2103, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Oral trusts that have not been reduced to writing as specified in this section are not enforceable. This section does not affect the power of a court to declare a resulting or constructive trust in the appropriate case or to order other relief where appropriate.

Sec. 12. Section 633.4105, subsection 2, paragraph b, subparagraph (2), Code 2003, is amended to read as follows:

(2) By a person appointed by the court on petition of an interested person or of a person named as trustee by the terms of the trust. The court, in selecting a trustee, shall consider any nomination made by the adult beneficiaries and representatives of any minor and incompetent beneficiaries as designated in section 633.6303.

Sec. 13. Section 633.4107, subsection 2, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. ee. If the trustee merges with another institution or the location or place of administration of the trust changes.

Sec. 14. Section 633.4207, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

633.4207 DIRECTORY POWERS.

1. While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the terms of the trust.

2. If the terms of the trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the trustee knows the attempted exercise violates the terms of the trust or the trustee knows that the person holding the power is incompetent.

3. A person other than a beneficiary who holds a power to direct is presumptively a fiduciary who is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from a breach of a fiduciary duty.

Sec. 15. Section 633.4213, subsections 1, 3, 6, and 7, Code 2003, are amended to read as follows:

1. The trustee shall inform each qualified beneficiary of the beneficiary's right to receive an annual accounting and a copy of the trust instrument. The trustee shall also inform each qualified beneficiary about the process necessary to obtain an annual accounting or a copy of the trust instrument, if not provided. The trustee shall further inform the each qualified beneficiary whether the beneficiary will, or will not, receive an annual accounting if the beneficiary fails to take any action. If a qualified beneficiary has previously been provided the notice required by this section, additional notice shall not be required due to a change of trustees or a change in the composition of the qualified beneficiaries.

3. A trustee of an irrevocable trust shall provide annually to each adult beneficiary and the representative of any minor or incompetent beneficiary who may receive a distribution of income or principal during the accounting time period, an accounting, unless an accounting has been waived specifically for ~~a-particular~~ that accounting time period.

6. The format and content of an accounting required by this section shall be within the discretion of the trustee, ~~if~~ as long as sufficient to reasonably inform the beneficiary of

the condition and activities of the trust during the accounting period.

7. This section does not apply to any trust created prior to July 1, 2002. This section applies to any trust created on or after July 1, 2002, unless the ~~trustor~~ settlor has specifically waived the requirements of this section in the trust instrument. Waiver of this section shall not bar any beneficiary's common-law right to an accounting, and shall not provide any immunity to a trustee, acting under the terms of the trust, for liability to any beneficiary who discovers facts giving rise to a cause of action against the trustee.

Sec. 16. Section 633.4214, subsection 3, paragraph c, subparagraph (3), Code 2003, is amended to read as follows:

(3) A trust, if contributions to the trust ~~which~~ qualify for an annual exclusion under section 2503(c) of the Internal Revenue Code of 1986.

Sec. 17. Section 633.4506, subsection 2, paragraph c, Code 2003, is amended to read as follows:

c. The trustee did not reasonably believe that the beneficiary knew the beneficiary's rights ~~or~~ and that the beneficiary knew material facts known to the trustee or which the trustee should have known.

Sec. 18. Section 633.4701, subsection 5, Code 2003, is amended to read as follows:

5. If both the beneficiary of an interest and any alternate beneficiary of that interest named in the trust die prior to the interest becoming possessory, and neither the beneficiary nor the alternate beneficiary has issue who are living on the date the interest becomes possessory, the beneficiary's interest shall be distributed to the takers of the settlor's residuary estate, or, if the trust is the sole taker of the settlor's residuary estate, in accordance with section 633.2106.

Sec. 19. Section 633.4701, Code 2003, is amended by adding the following new subsections:

NEW SUBSECTION. 6. If both the beneficiary of an interest and any alternate beneficiary of that interest named in the trust die prior to the interest becoming possessory, and both the beneficiary and the alternate beneficiary have issue who are living on the date the interest becomes possessory, the



issue of the beneficiary succeed to the interest of the beneficiary. The issue of the alternate beneficiary shall not succeed to any part of the interest of the beneficiary.

NEW SUBSECTION. 7. For the purposes of this section, persons appointed under a power of appointment shall be considered beneficiaries under this section and takers in default of appointment designated by the instrument creating the power of appointment shall be considered alternate beneficiaries under this section.

NEW SUBSECTION. 8. Subsections 2, 3, 4, 5, 6, and 7 do not apply to any interest subject to an express condition of survivorship imposed by the terms of the trust. For the purposes of this section, words of survivorship including, but not limited to, "my surviving children", "if a person survives" a named period, and terms of like import, shall be construed to create an express condition of survivorship. Words of survivorship include language requiring survival to the distribution date or to any earlier or unspecified time, whether those words are expressed in condition precedent, condition subsequent, or any other form.

NEW SUBSECTION. 9. If an interest to which this section applies is given to a class, other than a class described as "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, the members of the class who are living on the date on which the class becomes entitled to possession or enjoyment of the interest shall be considered as alternate beneficiaries under this section. However, neither the residuary beneficiaries under the settlor's will nor the settlor's heirs shall be considered as alternate beneficiaries for the purposes of this section.

Sec. 20. Section 633.6105, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the trustee's duty to administer the trust at a place appropriate to its purpose or administration, and the interests of the beneficiaries, may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States.

Sec. 21. Section 633.6301, subsections 3, 4, and 5, Code 2003, are amended to read as follows:

~~3. Except to the extent the terms of the trust indicate that the procedures specified are not to apply, a person interested in a fiduciary matter may approve a nonjudicial settlement containing such terms and conditions as a court could properly approve and represent and bind other persons interested in the fiduciary matter.~~

~~4.~~ 3. Notice to a person who may represent and bind another person under this ~~chapter~~ trust code has the same effect as if notice were given directly to the person represented.

~~5.~~ 4. The consent of a person who may represent and bind another person under this ~~chapter~~ trust code is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

Sec. 22. NEW SECTION. 633.6308 NONJUDICIAL SETTLEMENT AGREEMENTS.

1. For purposes of this subpart, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

2. Except as otherwise provided in subsection 3, or as to a modification or termination of a trust under section 633.2203, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

3. A nonjudicial settlement is valid only to the extent the settlement does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this trust code or other applicable law.

4. Matters that may be resolved by a nonjudicial settlement agreement include any of the following:

a. The interpretation or construction of the terms of the trust.

b. The approval of a trustee's report or accounting.

c. Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power.

d. The resignation or appointment of a trustee and the determination of a trustee's compensation.

e. The transfer of a trust's principal place of administration.

f. The liability of a trustee for an action relating to the trust.

5. Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation provided was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

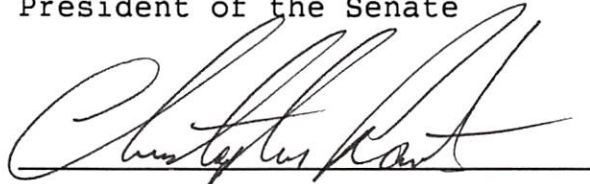
Sec. 23. Section 450.91, Code 2003, is repealed.

Sec. 24. Sections 1, 2, 3, 4, and 23 of this Act apply to estates of decedents dying on or after July 1, 2003.



MARY E. KRAMER

President of the Senate



CHRISTOPHER C. RANTS

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 366, Eightieth General Assembly.



MICHAEL E. MARSHALL

Secretary of the Senate

Approved May 1, 2003



THOMAS J. VILSACK

Governor