



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

April 26, 2006

The Honorable Chester Culver
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

House File 2665, an Act concerning the line of duty death benefit payable to public safety providers.

House File 2742, an Act relating to the probate and trust codes and providing applicability date provisions.

House File 2768, an Act authorizing the state medical examiner to collect and retain fees for medical examiner facility expenses and services related to tissue recovery and making an appropriation.

The above House Files are hereby approved this date.

Sincerely,

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

Thomas J. Vilsack
Governor

TJV:jmc

cc: Secretary of the Senate
Chief Clerk of the House





HOUSE FILE 2742

AN ACT
RELATING TO THE PROBATE AND TRUST CODES AND PROVIDING
APPLICABILITY DATE PROVISIONS.

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

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

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

Sec. 2. Section 633.246A, Code Supplement 2005, is amended to read as follows:

633.246A MEDICAL ASSISTANCE ELIGIBILITY.

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

Sec. 3. Section 633.356, subsection 8, paragraph b, Code 2005, is amended to read as follows:

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 or other property, 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. This paragraph shall apply to funds or property of the decedent transferred to the custody of the treasurer of state as unclaimed property pursuant to chapter 556.

Sec. 4. Section 633A.3102, subsection 6, Code Supplement 2005, is amended by striking the subsection.

Sec. 5. Section 633A.3103, Code Supplement 2005, is amended to read as follows:

633A.3103 OTHER RIGHTS OF SETTLOR.

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

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

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

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

Sec. 6. Section 633A.3104, Code Supplement 2005, is amended to read as follows:

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

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

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

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

Sec. 7. Section 633A.3105, subsection 2, Code Supplement 2005, is amended to read as follows:

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

Sec. 8. Section 633A.3109, Code Supplement 2005, is amended to read as follows:

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

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

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

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

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

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

notice by ordinary mail to the surviving spouse, the heirs of the decedent, and each beneficiary under the trust whose identities are reasonably ascertainable, at such person's last known address.

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

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

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

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

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

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

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

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

Dated this .. day of, (year) ...

..... Trust
.....
Trustee

Address:
.....

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

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

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

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

Sec. 9. Section 633A.3111, Code Supplement 2005, is amended to read as follows:

633A.3111 TRUSTEE'S LIABILITY FOR DISTRIBUTIONS.

1. A trustee who distributes trust assets without making adequate provisions for the payment of ~~creditor-claims~~ debts and charges that are known or reasonably ascertainable at the

time of the distribution shall be jointly and severally liable with the beneficiaries to the extent of the distributions made.

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

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

633A.3112 DEFINITIONS -- REVOCABLE TRUSTS.

As used in this subchapter:

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

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

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

Sec. 11. Section 633A.4207, subsection 2, Code Supplement 2005, is amended to read as follows:

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~~ not competent.

Sec. 12. Section 633A.4213, unnumbered paragraph 1, Code Supplement 2005, is amended to read as follows:

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

Sec. 13. Section 633A.4213, subsections 3 and 4, Code Supplement 2005, are amended to read as follows:

3. ~~A~~ Except as provided in subsection 4, 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 that accounting time period.

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

Sec. 14. NEW SECTION. 633A.4707 PERSON CAUSING DEATH.

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

Sec. 15. Section 633A.6301, Code Supplement 2005, is amended by adding the following new subsection:

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

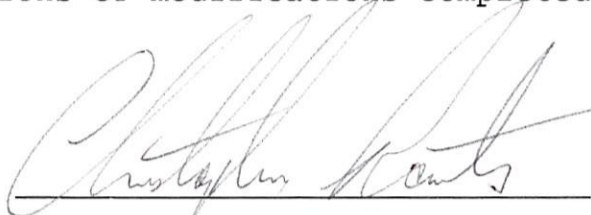
Sec. 16. APPLICABILITY DATES.

1. The section of this Act amending section 633A.3109 shall apply to trusts of settlors who die on or after July 1, 2006.


2. The sections of this Act amending section 633A.4213 shall apply to trust accounting periods ending on or after July 1, 2006.

3. The section of this Act creating section 633A.4707 shall apply to property, benefit, or other trust interests distributed on or after July 1, 2006.

4. The section of this Act amending section 633A.6301 shall apply to trust terminations or modifications completed on or after July 1, 2006.




CHRISTOPHER C. RANTS
Speaker of the House



JEFFREY M. LAMBERTI
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2742, Eighty-first General Assembly.



MARGARET THOMSON
Chief Clerk of the House

Approved April 26th, 2006



THOMAS J. VILSACK
Governor