



THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

April 19, 2005

The Honorable Chester Culver
Secretary of State
State Capitol Building
L O C A L

Dear Mr. Secretary:

I hereby transmit:

Senate File 339, an Act relating to regional transit districts.

Senate File 346, an Act appropriating federal funds made available from federal block grants and other federal grants, allocating portions of federal block grants, and providing procedures if federal funds are more or less than anticipated or if federal block grants are more or less than anticipated.

Senate File 379, an Act relating to the Iowa Probate Code, the Iowa Trust Code, and certain other trusts.

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 379

AN ACT

RELATING TO THE IOWA PROBATE CODE, THE IOWA TRUST CODE, AND CERTAIN OTHER TRUSTS.

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

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

d. Failure of a surviving spouse to take ~~against-a-will~~ 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 ~~against-the-will~~ an elective share would have exceeded the value of the inheritance received under the will.

Sec. 2. Section 633.3, subsection 15, Code 2005, is amended by striking the subsection and inserting in lieu thereof the following:

15. ESTATE -- the real and personal property of either a decedent or a ward, and may also refer to the real and personal property of a trust as defined in section 633.10.

Sec. 3. Section 633.3, subsection 17, Code 2005, is amended to read as follows:

17. FIDUCIARY -- includes personal representative, executor, administrator, guardian, conservator, and the trustee of any trust as defined in section 633.10.

Sec. 4. Section 633.3, subsection 34, Code 2005, is amended to read as follows:

34. TRUSTEE -- the person or persons ~~appointed-as-trustee by-the-instrument-creating-the-trust, or-the-person-or-persons appointed-by-the-court-to-administer-the-trust~~ servng as trustee of a trust as defined in section 633.10.

Sec. 5. Section 633.3, subsection 35, Code 2005, is amended by striking the subsection and inserting in lieu thereof the following:

35. TRUSTS -- includes only those trusts defined in section 633.10.

Sec. 6. Section 633.10, unnumbered paragraph 1, Code 2005, is amended to read as follows:

~~The~~ In addition to the jurisdiction granted the district court under the trust code or elsewhere, the district court sitting in probate shall have jurisdiction of:

Sec. 7. Section 633.10, subsection 2, Code 2005, is amended to read as follows:

2. CONSTRUCTION OF WILLS ~~AND-TRUST-INSTRUMENTS~~.

The construction of wills ~~and-trust-instruments~~ during the administration of the estate ~~or-trust~~, whether said construction be incident to such administration, or as a separate proceeding.

Sec. 8. Section 633.10, subsection 4, Code 2005, is amended by striking the subsection and inserting in lieu thereof the following:

4. TRUSTS AND TRUSTEES.

a. The ongoing administration and supervision, including but not limited to the appointment of trustees, the granting of letters of trusteeship, trust administration, and trust settlement and closing, of the following trusts:

(1) A trust that was in existence on July 1, 2005, and that is subject to continuous court supervision.

(2) A trust established by court decree that is subject to continuous court supervision.

b. A trust described in paragraph "a" shall be governed by this chapter and the provisions of chapter 633A which are not inconsistent with the provisions of this chapter.

c. A trust not described in paragraph "a" shall be governed exclusively by chapter 633A and shall be subject to the jurisdiction of the district court sitting in probate only as provided in section 633.6101.

d. Upon joint application by all trustees administering a trust described in paragraph "a" and following notice to the beneficiaries pursuant to section 633.40, the court shall release the trust from further jurisdiction unless a beneficiary objects. The court whose decree created the trust may release the trust from continuous court supervision following notice to the beneficiary pursuant to section 633.40. If such judicial release occurs for a trust previously governed by this chapter, such trust shall be governed by chapter 633A and the district court sitting in probate only as provided in section 633.6101.

Sec. 9. Section 633.27, subsection 4, Code 2005, is amended to read as follows:

4. The title of each trust ~~where letters of trusteeship are issued~~ described in section 633.10 that has not been released by the court from continuous court supervision.

Sec. 10. Section 633.108, Code 2005, is amended to read as follows:

633.108 SMALL DISTRIBUTIONS TO MINORS -- PAYMENT.

Whenever a minor becomes entitled under the terms of a will to a bequest or legacy, or to a share of the estate of an intestate, ~~or to a beneficial interest in a trust fund upon the distribution of the trust fund,~~ and the value of the bequest, legacy, or share, ~~or interest~~ does not exceed the sum of ~~ten~~ twenty-five thousand dollars, the personal representative ~~or trustee~~ may pay the bequest, legacy, or share, ~~or interest~~ to a custodian under any uniform transfers to minors Act. Receipt by the custodian, when presented to the court or filed with the report of distribution of the fiduciary, shall have the same force and effect as though the payment had been made to a duly appointed and qualified conservator for the minor.

Sec. 11. Section 633.197, unnumbered paragraph 1, Code 2005, is amended to read as follows:

Personal representatives shall be allowed such reasonable fees as may be determined by the court for services rendered, but not in excess of the following commissions upon the gross assets of the estate listed in the probate inventory ~~for Iowa inheritance tax purposes~~, which shall be received as full compensation for all ordinary services:

Sec. 12. Section 633.236, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.236 RIGHT OF ELECTIVE SHARE OF SURVIVING SPOUSE.

When a married person domiciled in Iowa at the time of death dies, the surviving spouse shall have the right to take an elective share under the provisions of sections 633.237 through 633.246. If the surviving spouse has a conservator, the court may authorize or direct the conservator to elect the share as the court deems appropriate under the circumstances.

Sec. 13. Section 633.237, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.237 PRESUMPTION AGAINST FILING ELECTIVE SHARE.

1. Following the appointment of a personal representative of the estate of the decedent, who is not the spouse, the personal representative shall cause to be served a written notice upon the surviving spouse pursuant to section 633.40, subsection 5, notifying the surviving spouse that unless, within four months after service of the notice, the spouse files an election in writing with the clerk of court electing the share as set forth in section 633.236, and sections 633.238 through 633.246, the spouse shall be deemed to take under the will or to receive the intestate share. If, within the four-month period following service of the notice, an affidavit is filed setting forth that the surviving spouse is incapable of making the election and does not have a conservator, the personal representative shall make application to the court for an order pursuant to section 633.244.

2. Following the death of a settlor of a revocable trust, the trustee of such revocable trust who is not the spouse shall cause to be served a written notice upon the surviving spouse pursuant to section 633.40, subsection 5, notifying the surviving spouse that unless, within four months after service of the notice, the spouse files an election with the trustee electing the share as set forth in section 633.236, and sections 633.238 through 633.246, the spouse shall be deemed to take under the terms of the revocable trust. If, within the four-month period following service of the notice, an affidavit is filed setting forth that the surviving spouse is

incapable of making the election and does not have a conservator, the trustee shall make application to the court for an order pursuant to section 633.244.

3. If the surviving spouse has a conservator, notice shall be given to the conservator and the spouse pursuant to subsections 1 and 2.

4. The notice provisions under subsections 1 and 2 are not applicable if the surviving spouse is a personal representative of the estate or a trustee of a revocable trust. If the surviving spouse fails to file an election under this section within four months of the decedent's death, it shall be conclusively presumed that the surviving spouse elects to take under the will, receive the intestate share, or take under the revocable trust.

5. Upon application of the surviving spouse or the spouse's conservator filed before the time for making the election expires, the court may extend the period in which the surviving spouse may make the election.

Sec. 14. Section 633.238, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.238 ELECTIVE SHARE OF SURVIVING SPOUSE.

1. The elective share of the surviving spouse shall be all of the following:

a. One-third in value of all the legal or equitable estates in real property possessed by the decedent at any time during the marriage which have not been sold on execution or other judicial sale, and to which the surviving spouse has made no express written relinquishment of right.

b. All personal property that, at the time of death, was in the hands of the decedent as the head of a family, exempt from execution.

c. One-third of all personal property of the decedent that is not necessary for the payment of debts and charges.

d. One-third in value of the property held in trust not necessary for the payment of debts and charges over which the decedent was a grantor and retained at the time of death the power to alter, amend, or revoke the trust, or over which the decedent waived or rescinded any such power within one year of the date of death, and to which the surviving spouse has not made any express written relinquishment.

2. The elective share described in this section shall be in lieu of any property the spouse would otherwise receive under the last will and testament of the decedent, through intestacy, or under the terms of a revocable trust.

Sec. 15. Section 633.239, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.239 SHARE TO EMBRACE HOMESTEAD.

The share of the surviving spouse in such real estate shall be set off in such manner as to include the homestead, or so much thereof as will be equal to the share allotted to the spouse pursuant to section 633.238 unless the spouse prefers a different arrangement, but no such different arrangement shall be allowed unless there is sufficient property remaining to pay the claims and charges against the decedent's estate.

Sec. 16. Section 633.240, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.240 ELECTION TO RECEIVE HOMESTEAD.

In estates in which the surviving spouse has filed an election and in all intestate estates, whether an election is filed or not, the surviving spouse or the spouse's conservator, if applicable, may, in lieu of the spouse's share in the real property possessed by the decedent at any time during the marriage, which has not been sold on execution or other judicial sale, and to which the surviving spouse has made no express written relinquishment of right, elect to receive a life estate in the homestead. Such election shall be made and entered of record as provided in section 633.245. In making such election, the surviving spouse shall have all the rights as to the personal property provided in section 633.238, subsection 1, paragraphs "b", "c", and "d". In case of failure to make such election, the right to receive the life estate in the homestead shall be waived.

Sec. 17. Section 633.241, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.241 TIME FOR ELECTION TO RECEIVE LIFE ESTATE IN HOMESTEAD.

If the surviving spouse does not make an election to receive the life estate in the homestead and file it with the

clerk within four months from the date of second publication of notice to creditors, it shall be conclusively presumed that the surviving spouse waives the right to make the election. The court on application may, prior to the expiration of the period of four months, for cause shown, enter an order extending the time for making the election.

Sec. 18. Section 633.242, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.242 RIGHTS OF ELECTION PERSONAL TO SURVIVING SPOUSE.

The right of the surviving spouse to take an elective share, and the right of the surviving spouse to receive a life estate in the homestead, are personal. They are not transferable and cannot be exercised for the spouse subsequent to the spouse's death. If the surviving spouse dies prior to filing an election, it shall be conclusively presumed that the surviving spouse does not take such elective share.

Sec. 19. Section 633.243, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.243 FILING ELECTIONS.

The filing of the elective share and the election to receive a life estate in the homestead shall be filed in the office of the clerk in which the decedent's estate is being administered and served on the trustee of the revocable trust. The court where the election is filed shall have exclusive jurisdiction over all matters regarding elections under this chapter.

Sec. 20. Section 633.244, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.244 INCOMPETENT SPOUSE -- ELECTION BY COURT.

In case an affidavit is filed that the surviving spouse is incapable of determining whether to take the elective share, or to elect to receive a life estate in the homestead, and does not have a conservator, the court shall fix a time and place of hearing on the matter and cause a notice thereof to be served upon the surviving spouse in such manner and for such time as the court may direct. At the hearing, a guardian ad litem shall be appointed to represent the spouse and the court shall enter such orders as it deems appropriate under

the circumstances. The guardian ad litem shall be a practicing attorney.

Sec. 21. Section 633.246A, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.246A MEDICAL ASSISTANCE ELIGIBILITY.

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. 22. Section 633.247, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.247 SETTING OFF ELECTIVE SHARE OF SURVIVING SPOUSE.

The share of the surviving spouse under section 633.236 may be set off by the mutual consent of all parties in interest, or by referees appointed by the court. An application to have the share set off by referees shall be made by an interested party in writing by filing with the clerk of court. A copy of such application shall be sent to all interested parties.

Sec. 23. Section 633.248, Code 2005, is amended to read as follows:

633.248 REFEREE -- NOTICE.

In the absence of mutual consent of all interested parties to the appointment of referees, the court shall fix a time and place for hearing upon such application and of the fact that referees will be appointed if such application is granted, and shall prescribe the time and manner of the service of notice of the hearing.

Sec. 24. Section 633.252, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.252 CONFIRMATION CONCLUSIVE -- POSSESSION.

An order confirming a report of the referee shall be binding and conclusive unless appealed within thirty days and the surviving spouse may bring an action to obtain possession of any assets set apart to the surviving spouse. Such elective share constitutes a judgment lien in favor of such surviving spouse against the possessor of such assets.

Sec. 25. Section 633.264, Code 2005, is amended to read as follows:

633.264 DISPOSAL OF PROPERTY BY WILL.

Subject to the rights of the surviving spouse to ~~elect to~~ take ~~against the will~~ an elective share as provided by section 633.236, any person of full age and sound mind may dispose by will of all the person's property, except sufficient to pay the debts and charges against the person's estate.

Sec. 26. Section 633.271, Code 2005, is amended to read as follows:

633.271 EFFECT OF DIVORCE OR DISSOLUTION.

1. If after making a will the testator is divorced or the testator's marriage is dissolved, all provisions in the will in favor of the testator's spouse or of a relative of the testator's spouse, including but not limited to dispositions, appointments relating to of property, and nominations to serve in any fiduciary or representative capacity, are thereby revoked by the divorce or dissolution of marriage, unless the will provides otherwise.

2. In Unless the will provides otherwise, in the event the testator and spouse remarry each other, the provisions of the will revoked by the divorce or dissolution of marriage shall be reinstated unless otherwise revoked by the testator, except for provisions in favor of a person who died prior to the remarriage which shall not be reinstated.

3. For the purposes of this section, "relative of the testator's spouse" means a person who is related to the divorced testator's former spouse by blood, adoption, or affinity, and who, subsequent to a divorce or dissolution of marriage, ceased to be related to the testator by blood, adoption, or affinity.

Sec. 27. Section 633.434, unnumbered paragraph 2, Code 2005, is amended to read as follows:

Upon the expiration of the later to occur of four months after the date of the second publication of notice to creditors or one month after the service of the notice by ordinary mail upon all claimants whose identities are reasonably ascertainable, at their last known addresses and whose claims will not or may not be paid or otherwise satisfied during administration, the personal representative shall pay the debts and charges against the estate in

accordance with this probate code. If it appears at any time that the estate is or may be insolvent, that there are insufficient funds on hand, or that there is other good and sufficient cause, the personal representative may report that fact to the court and apply for any order that the personal representative deems necessary.

Sec. 28. Section 633.477, subsection 10, Code 2005, is amended to read as follows:

10. A statement as to whether or not all statutory requirements pertaining to taxes have been complied with ~~and a statement as to~~ including whether the federal estate tax due has been paid, ~~and whether a lien continues to exist for any federal estate tax, and whether inheritance tax was paid or a return was filed in this state.~~

Sec. 29. Section 633.574, Code 2005, is amended to read as follows:

633.574 PROCEDURE IN LIEU OF CONSERVATORSHIP.

If a conservator has not been appointed, money due a minor or other property to which a minor is entitled, not exceeding in the aggregate ~~ten~~ twenty-five thousand dollars in value, shall be paid or delivered to a custodian under any uniform transfers to minors Act. The written receipt of the custodian constitutes an acquittance of the person making the payment of money or delivery of property.

Sec. 30. Section 633.681, Code 2005, is amended to read as follows:

633.681 ASSETS OF MINOR WARD EXHAUSTED.

When the assets of a minor ward's conservatorship are exhausted or consist of personal property only of an aggregate value not in excess of ~~ten~~ twenty-five thousand dollars, the court, upon application or upon its own motion, may terminate the conservatorship. The order for termination shall direct the conservator to deliver any property remaining after the payment of allowed claims and expenses of administration to a custodian under any uniform transfers to minors Act. Such delivery shall have the same force and effect as if delivery had been made to the ward after attaining majority.

Sec. 31. Section 633.699, Code 2005, is amended by striking the section and inserting in lieu thereof the following:

633.699 POWERS OF TRUSTEES.

Unless it is otherwise provided by the will creating a testamentary trust, the instrument creating an express trust, or by an order or decree duly entered by a court of competent jurisdiction, a trustee shall have all the powers granted a trustee under sections 633.4401 and 633.4402. Documents incorporating by reference powers granted a trustee under the probate code or under this section shall be interpreted accordingly, even if the execution or adoption of the instrument creating the trust occurred prior to July 1, 2005.

Sec. 32. NEW SECTION. 633.699B APPLICABILITY OF LAW.

The terms of this division, and all other terms of this probate code relating to trusts and trustees, shall apply only to trusts that remain under continuous court supervision pursuant to section 633.10 and to trusts that have not been released from such continuous supervision pursuant to section 633.10. Regarding all such trusts, the terms of this chapter shall supersede any inconsistent terms in the trust code and such trusts shall be governed by terms of the trust code that are not inconsistent with this probate code.

Sec. 33. Section 633.705, Code 2005, is amended by adding the following new subsections:

NEW SUBSECTION. 3. Receipt of the affidavit described in subsection 2 by the holder of the principal's property constitutes sufficient acquittance for the payment of money, delivery of property, or transfer of a registered ownership of property as directed by the attorney in fact or agent and discharges the holder from further liability with respect to the money or property, if the holder has taken reasonable steps to verify the identity of the person acting as attorney in fact or agent. The holder of the principal's property may rely in good faith on the statements contained in the affidavit and has no duty to inquire into the truth of any statements in the affidavit.

NEW SUBSECTION. 4. If an attorney in fact or agent has provided the affidavit described in subsection 2 and the holder of the principal's property refuses to pay, deliver, or transfer any property or evidence thereof within a reasonable amount of time, the principal, acting through the attorney in fact or agent, may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property.

a. If an action is brought against the holder under this subsection and the court finds that the holder of the principal's property acted unreasonably in refusing to pay, deliver, or transfer the property as directed by the attorney in fact, the court may award any or all of the following to the principal:

(1) Damages sustained by the principal.

(2) Costs of the action.

(3) A penalty in an amount determined by the court, not less than five hundred dollars or more than one thousand dollars.

(4) Reasonable attorney fees, as determined by the court, based on the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the principal.

b. No action shall be brought pursuant to this section more than one year after the date of the occurrence of the violation.

Sec. 34. Section 633.706, Code 2005, is amended by adding the following new subsections:

NEW SUBSECTION. 4. Receipt, by the holder of the principal's property, of the affidavit described in subsection 2 constitutes sufficient acquittance for the payment of money, delivery of property, or transfer of the registered ownership of property as directed by the attorney in fact or agent and discharges the holder from any further liability to any person with respect to the money or the property, if the holder has taken reasonable steps to verify the identity of the person acting as attorney in fact or agent. The holder of the principal's property may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any of the statements in the affidavit.

NEW SUBSECTION. 5. If an attorney in fact or agent has provided the affidavit described in subsection 2 and the holder of the principal's property refuses to pay, deliver, or transfer any property or evidence thereof within a reasonable amount of time, the principal, acting through the attorney in fact may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property.

a. If an action is brought against the holder under this subsection and the court finds that the holder of the principal's property acted unreasonably in refusing to pay, deliver, or transfer the property as directed by the attorney in fact, the court may award any or all of the following to the principal:

(1) Damages sustained by the principal.

(2) Costs of the action.

(3) A penalty in an amount determined by the court, not less than five hundred dollars or more than one thousand dollars.

(4) Reasonable attorney fees, as determined by the court, based on the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the principal.

b. No action shall be brought pursuant to this section more than one year after the date of the occurrence of the violation.

Sec. 35. Section 633.1102, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 0A. "Adjusted gross estate", as it relates to a trust, means the same as defined in section 633.266.

Sec. 36. Section 633.1107, Code 2005, is amended to read as follows:

633.1107 SCOPE OF TRUST CODE.

1. This Except as otherwise provided in subsection 2, this trust code is-intended-to shall apply to trusts, as defined in section 633.1102, ~~subsection-177~~ that are intentionally created, or deemed to be intentionally created, by individuals and other entities.

2. With regard to trusts described in section 633.10, that have not been judicially released from continuous court supervision, this trust code shall apply only to the extent not inconsistent with the relevant provisions of chapter 633. With regard to all other trusts defined in section 633.1102, the terms of chapter 633 shall be inapplicable, and the terms of this trust code shall prevail over any inconsistent provisions of Iowa law.

Sec. 37. Section 633.2208, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 3. By way of illustration and without limitation, a trust may be divided pursuant to this section to allow a trust to qualify as a marital deduction trust for tax purposes, as a qualified subchapter S trust for federal income tax purposes, as a separate trust for federal generation skipping tax purposes, or for any other federal or state income, estate, excise, or inheritance tax benefit, or to facilitate the administration of a trust.

Sec. 38. Section 633.2301, subsection 4, unnumbered paragraph 1, Code 2005, is amended to read as follows:

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

Sec. 39. Section 633.2303, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 3. The assets of an irrevocable trust shall not become subject to the claims of creditors of the settlor of a trust solely due to a provision in the trust that allows a trustee of the trust to reimburse the settlor for income taxes payable on the income of the trust. This subsection shall not limit the rights of a creditor of the settlor to assert a claim against the assets of the trust due to the retention or grant of any rights to the settlor under the trust instrument or any other beneficial interest of the settlor other than as specifically set forth in this subsection.

Sec. 40. Section 633.3107, Code 2005, is amended to read as follows:

633.3107 EFFECT OF DIVORCE OR DISSOLUTION.

1. If, after executing a revocable trust, the settlor is divorced or the settlor's marriage is dissolved, all provisions in the trust in favor of the settlor's spouse or of a relative of the settlor's spouse, including, but not limited to, dispositions, appointments of property, and nominations to serve in any fiduciary or representative capacity are revoked by divorce or dissolution of marriage unless the trust instrument provides otherwise.

2. ~~In~~ Unless the trust instrument provides otherwise, in the event the settlor and spouse remarry each other, the provisions of the revocable trust revoked by the divorce or

dissolution of marriage shall be reinstated unless otherwise modified by the settlor, except for provisions in favor of a person who died prior to the remarriage which shall not be reinstated.

For the purposes of this section, "relative of the settlor's spouse" means a person who is related to the divorced settlor's former spouse by blood, adoption, or affinity, and who, subsequent to the divorce or dissolution of marriage, ceased to be related to the settlor by blood, adoption, or affinity.

Sec. 41. NEW SECTION. 633.3112 CLASSIFICATION OF DEBTS AND CHARGES.

If a revocable trust becomes subject to the claims of a settlor's creditors and the costs of administration of the settlor's estate pursuant to section 633.3104, 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.

Sec. 42. Section 633.4701, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 8A. For the purposes of this section, a term of the trust requiring that a beneficiary survive a person whose death does not make the beneficiary entitled to possession or enjoyment of the beneficiary's interest in the trust shall not be considered as "otherwise specifically stated by the terms of the trust" nor as an "express condition of survivorship imposed by the terms of the trust".

Sec. 43. Section 633.4701, subsection 9, Code 2005, is amended to read as follows:

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. 44. NEW SECTION. 633.4703 GENERAL ORDER FOR ABATEMENT.

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, and the shares of children born or adopted after the execution of the trust, abatement shall occur in the following order:

1. Shares allocated to the residuary beneficiaries of the trust shall be abated first, on a pro rata basis.

2. Shares defined by a dollar amount, on a pro rata basis.

3. Shares described as specific items of property whether tangible or intangible shall be abated last, and such abatement shall be done as equitably by the trustee among the various beneficiaries as circumstances reasonably allow.

4. Notwithstanding subsections 1, 2, or 3, a disposition in favor of the grantor's surviving spouse 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.

Sec. 45. NEW SECTION. 633.4704 SIMULTANEOUS DEATH.

If the determination of the successor of a beneficial interest in a trust is dependent upon whether a beneficiary has survived the death of a settlor, of another beneficiary, or of any other person, the uniform simultaneous death Act, sections 633.523 through 633.528, shall govern the determination of who shall be considered to have died first.

Sec. 46. NEW SECTION. 633.4705 PRINCIPAL AND INCOME.

Chapter 637 shall apply to trusts subject to this chapter.

Sec. 47. NEW SECTION. 633.4706 SMALL DISTRIBUTIONS TO MINORS -- PAYMENT.

When a minor becomes entitled under the terms of the trust to a beneficial interest in the trust upon the distribution of the trust fund and the value of the interest does not exceed the sum of twenty-five thousand dollars, the trustee may pay the interest to a custodian under any uniform transfers to minors Act. Receipt by the custodian shall have the same force and effect as though payment had been made to a duly appointed and qualified conservator for the minor.

Sec. 48. NEW SECTION. 633.5105 CHARITABLE TRUSTS.

In addition to the provisions of this chapter, a charitable trust that is a private foundation shall be governed by the provisions of chapter 634.

Sec. 49. Section 633.6101, Code 2005, is amended to read as follows:

633.6101 SUBJECT MATTER JURISDICTION.

The district court sitting in probate has exclusive jurisdiction of proceedings concerning the internal affairs of a trust and of actions and proceedings to determine the existence of a trust, actions and proceedings by or against creditors or debtors of a trust, and other actions and proceedings involving a trust and third persons. Such jurisdiction may be invoked by any interested party at any time.

Sec. 50. Sections 633.28, 633.699A, 633.703A, 633.703B, 633.7101, 636.60, 636.60A, 636.61, Code 2005, are repealed.

Sec. 51. Sections 633.2; 633.3, unnumbered paragraph 1; 633.3, subsections 7 and 20; 633.22, subsection 4; 633.34; 633.38; 633.40, subsection 1; 633.44; 633.46; 633.47; 633.71; 633.88; 633.118; 633.160; 633.162; 633.350; 633.365; 633.389; 633.433; 633.500; 633.502; 633.597; 633.633; 633.633A; and 633.652, Code 2005, are amended by striking from the applicable section, paragraph, or subsection the word "Code" and inserting in lieu thereof the following: "probate code".

Sec. 52. CODE EDITOR DIRECTIVE. Sections 633.707, unnumbered paragraph 1; 633.711, subsection 2; 633.800; 633.801, unnumbered paragraph 1; 633.803; 633.807, subsections 2 and 7; 633.808; 633.809; 633.810; 633.901; 633.902, unnumbered paragraph 1; 633.903; 633.904; 633.905, subsection 6; 633.913, subsections 5 and 6; 633.914; 633.915; 633.916; 633.917; 633.1101; 633.1102, unnumbered paragraph 1; and 633.1104; Code 2005, are amended by striking from the applicable section, paragraph, or subsection the word "division" and inserting in lieu thereof the following: "chapter".

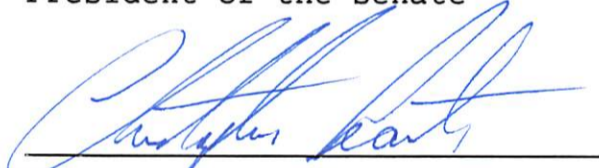
Sec. 53. CODE EDITOR DIRECTIVE. The Code editor is directed to transfer from chapter 633, division XVII (sections 633.705 and 633.706), division XVIII (633.707 through 633.711), division XIX (633.800 through 633.811), and division XX (633.901 through 633.917), as amended in this Act, to new chapters 633B, 633C, 633D, and 633E, respectively.

Sec. 54. CODE EDITOR DIRECTIVE. The Code editor is directed to transfer from chapter 633, sections 633.1101 through 633.1108, 633.2101 through 633.2107, 633.2201 through 633.2208, 633.2301 through 633.2303, 633.3101 through 633.3111, 633.4101 through 633.4111, 633.4201 through 633.4214, 633.4301 through 633.4309, 633.4401 and 633.4402, 633.4501 through 633.4507, 633.4601 through 633.4605, 633.4701 and 633.4702, 633.5101 through 633.5104, 633.6101 through 633.6105, 633.6201 and 633.6202, and 633.6301 through 633.6308, as amended in this Act, to new chapter 633A and to retain the same section number designations.

Sec. 55. CODE EDITOR DIRECTIVE. The Code editor is directed to correct internal references in the Code as necessary due to the enactment of this Act.



JOHN P. KIBBIE
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 379, Eighty-first General Assembly.



MICHAEL E. MARSHALL
Secretary of the Senate

Approved April 19, 2005



THOMAS J. VILSACK
Governor