



CHESTER J. CULVER
GOVERNOR

OFFICE OF THE GOVERNOR

PATTY JUDGE
LT. GOVERNOR

April 9, 2009

The Honorable Michael Mauro
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

Senate File 365, an Act relating to trusts and estates including the administration of small estates and including retroactive and other applicability provisions.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Culver", with a long horizontal flourish extending to the right.

Chester J. Culver
Governor

CJC:bdj

cc: Secretary of the Senate
Chief Clerk of the House





SENATE FILE 365

AN ACT

RELATING TO TRUSTS AND ESTATES INCLUDING THE ADMINISTRATION
OF SMALL ESTATES AND INCLUDING RETROACTIVE AND OTHER
APPLICABILITY PROVISIONS.

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

Section 1. Section 614.14, subsection 6, Code 2009, is amended to read as follows:

6. An interest in real estate ~~currently or previously~~ held of record at any time by a trust shall be deemed to be held of record by the trustee of such trust.

Sec. 2. Section 633.40, subsection 1, Code 2009, is amended to read as follows:

1. COURT PRESCRIBING NOTICE. Except as otherwise provided in this probate code, the court shall fix the time and place of hearing of any matter requiring notice and shall prescribe ~~the time and manner of service of the notice of such hearing~~ a time for the hearing not less than twenty days after the date the notice is served unless the court finds there is good cause shown to shorten the time period to less than twenty days. The court shall also prescribe the manner of service of the notice of such hearing.

Sec. 3. Section 633.237, subsection 4, Code 2009, is amended to read as follows:

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 or if the surviving spouse or the spouse's conservator files, at any time, an election to take under the will, receive the intestate share, or take under the 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.

Sec. 4. Section 633.238, subsection 1, unnumbered paragraph 1, Code 2009, is amended to read as follows:

The elective share of the surviving spouse shall be limited to all of the following:

Sec. 5. Section 633.246, Code 2009, is amended to read as follows:

633.246 ELECTION NOT SUBJECT TO CHANGE.

An election by or on behalf of a surviving spouse to take the share provided in ~~either~~ section 633.211, 633.212, 633.236, 633.238, or 633.240, or 633.244 ~~hereof-once-made~~ shall be binding and shall not be subject to change except for such causes as would justify an equitable decree for the rescission of a deed.

Sec. 6. Section 633.350, Code 2009, is amended to read as follows:

633.350 TITLE TO DECEDENT'S ESTATE -- WHEN PROPERTY PASSES -- POSSESSION AND CONTROL THEREOF -- LIABILITY FOR ADMINISTRATION EXPENSES, DEBTS, AND FAMILY ALLOWANCE.

Except as otherwise provided in this probate code, when a person dies, the title to the person's property, real and personal, passes to the person to whom it is devised by the person's last will, or, in the absence of such disposition, to the persons who succeed to the estate as provided in this probate code, but all of the property shall be subject to the possession of the personal representative as provided in section 633.351 and to the control of the court for the purposes of administration, sale, or other disposition under the provisions of law, and such property, except homestead and other exempt property, shall be chargeable with the payment of debts and charges against the estate. There shall be no priority as between real and personal property, except as provided in this probate code or by the will of the decedent. If real property is titled at any time in a decedent's estate, such property shall be treated as titled in the name of the personal representative of the estate.

Sec. 7. Section 633.376, Code 2009, is amended to read as follows:

633.376 ALLOWANCE TO CHILDREN WHO DO NOT RESIDE WITH SURVIVING SPOUSE.

1. The court may also make an allowance to a child of the decedent who is less than eighteen years of age or who is between the ages of eighteen and twenty-two years who is regularly attending an accredited school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational-technical training either as a part of a regular school program or under special arrangements adapted to the individual person's needs; or is, in good faith, a full-time student in a college, university, or community college; or has been accepted for admission to a college, university, or community college and the next regular term has not yet begun; or a child of any age who is dependent because of physical or mental disability; who does not reside with the surviving spouse, of an amount it deems reasonable in the light of the assets and condition of the estate, to provide for the child's proper support during the period of twelve months.

2. The estate's personal representative shall cause written notice to be mailed pursuant to section 633.40, subsection 5, to the legal guardian of each child qualified under subsection 1 and to each child who has no legal guardian. The notice shall inform the child and the child's guardian, if applicable, of the right to apply, within four months after service of the notice, for support for a period of twelve months following the decedent's death. If an application for support has not been filed within four months after service of the notice by or on behalf of the child qualifying for support under subsection 1, the child shall be deemed to have waived the right to support under this section. A child who qualifies for support under this section may waive the child's right to such support by filing an affidavit acknowledging receipt of notice and irrevocably waiving the child's right to support under this section.

Sec. 8. Section 633.639, Code 2009, is amended to read as follows:

633.639 TITLE TO WARD'S PROPERTY.

The title to all property of the ward is in the ward and not the conservator subject, however, to the possession of the conservator and to the control of the court for the purposes of administration, sale or other disposition, under the provisions of the law. Any real property titled at any time in the name of a conservatorship shall be deemed to be titled in the ward's name subject to the conservator's right of possession.

Sec. 9. Section 633A.2203, Code 2009, is amended to read as follows:

633A.2203 ~~MODIFICATION-OR~~ TERMINATION OF IRREVOCABLE TRUST OR MODIFICATION OF DISPOSITIVE PROVISIONS OF IRREVOCABLE TRUST BY COURT.

1. An irrevocable trust may be terminated or its dispositive provisions modified by the court with the consent of all of the beneficiaries if continuance of the trust on the same or different terms is not necessary to carry out a material purpose.

2. Upon termination of the trust, the court shall order the distribution of trust property in accordance with the probable intention of the settlor.

3. For purposes of this section, the consent of a person who may bind a beneficiary is considered the consent of the beneficiary.

4. For the purposes of this section, removal of the trustee or the addition of a provision to the trust instrument allowing a beneficiary or a group of beneficiaries to remove the trustee or to appoint a new trustee shall not be allowed as a modification under this section. This subsection shall not operate to limit the scope of dispositive provisions for the purposes of this section.

Sec. 10. Section 633A.4502, Code 2009, is amended to read as follows:

633A.4502 BREACH OF TRUST -- ACTIONS.

1. ~~To~~ Except as provided in section 633A.4213, to remedy a breach of trust which has occurred or may occur, a beneficiary or cotrustee of the trust may request the court to do any of the following:

- 1- a. Compel the trustee to perform the trustee's duties.
- 2- b. Enjoin the trustee from committing a breach of trust.
- 3- c. Compel the trustee to redress a breach of trust by payment of money or otherwise.
- 4- d. Appoint a receiver or temporary trustee to take possession of the trust property and administer the trust.
- 5- e. Remove the trustee.
- 6- f. Reduce or deny compensation to the trustee.
- 7- g. Subject to section 633A.4603, nullify an act of the trustee, impose an equitable lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds.
- 8- h. Order any other appropriate relief.

2. This section does not apply to any trust created prior to July 1, 2002, and applies to trusts created on or after July 1, 2002, unless the 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. 11. Section 635.8, subsection 1, unnumbered paragraph 1, Code 2009, is amended to read as follows:

The personal representative shall file with the court a closing statement and proof of service thereof within a reasonable time from the date of issuance of the letters of appointment, and the closing statement shall be verified or affirmed under penalty of perjury, stating all of the following:

Sec. 12. Section 637.421, Code 2009, is amended to read as follows:

637.421 DEFERRED COMPENSATION, ANNUITIES, AND SIMILAR PAYMENTS.

1. This-section-applies-to-payments For purposes of this section, the following definitions shall apply:

a. "Payments" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property

transferred to the payor in exchange for future payments. The payments "Payments" include those made in cash money or property from the payor's general assets or from a separate fund created by the payor, ~~including.~~ For purposes of subsections 4, 5, 6, and 7, "payments" also includes any payment from a separate fund regardless of the reason for the payment.

b. "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan. ~~This section does not apply to payments to which section 637.422 applies.~~

2. To the extent that a payment is characterized as interest, ~~or~~ a dividend or a payment made in lieu of interest or a dividend, ~~it must be allocated~~ a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment ~~must be allocated to principal.~~

3. If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment ~~must be allocated~~ to principal. For purposes of this subsection, a payment is not required to be made to the extent that the payment is made because the trustee exercises a right of withdrawal.

4. ~~If, to obtain an estate tax marital deduction for a trust, a trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.~~ Except as otherwise provided in subsection 5, subsections 6 and 7 apply, and subsections 2 and 3 do not apply in determining the allocation of a payment made from a separate fund to any of the following:

a. A trust to which an election to qualify for a marital deduction had been made under section 2056(b)(7) of the Internal Revenue Code of 1986, as amended.

b. A trust that qualifies for a marital deduction under section 2056(b)(5) of the Internal Revenue Code of 1986, as amended.

5. Subsections 4, 6, and 7 do not apply if and to the extent that the series of payments would, without the application of subsection 4, qualify for a marital deduction under section 2056(b)(7)(c) of the Internal Revenue Code of 1986, as amended.

6. A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund to distribute such internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

7. If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent of the value of the fund according to the most recent statement of the value prior to the beginning of the accounting period. If the trustee is unable to determine the internal income of the separate fund and the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments as determined pursuant to section 7520 of the Internal Revenue Code of 1986, as amended.

8. This section does not apply to a payment made under section 637.422.

Sec. 13. Section 637.505, subsections 3 and 4, Code 2009, are amended to read as follows:

3. A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid ~~proportionately,~~ according to all of the following principles:

a. From income, to the extent that receipts from the entity are allocated only to income.

b. From principal, to the extent that ~~the following principles are observed:~~

~~(1)--Receipts~~ receipts from the entity are allocated only to principal.

~~(2)--The trust's share of the entity's taxable income exceeds the total receipts in paragraph "a" and in subparagraph (1).~~

c. Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal.

d. From principal to the extent that the tax exceeds the total receipts from the entity.

~~4. For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax~~ After applying subsections 1 through 3, the trustee shall adjust income or principal receipts to the extent that the taxes of the trust are reduced because the trust receives a deduction for payments made to a beneficiary.

Sec. 14. APPLICABILITY AND RETROACTIVITY.

1. The section of this Act amending section 614.14 applies retroactively to all trusts in existence on and after July 1, 1999.

2. The section of this Act amending section 633.40, subsection 1, applies to orders setting hearings entered on or after July 1, 2009.

3. The sections of this Act amending section 633.237, subsection 4, section 633.238, subsection 1, and section 633.246 apply to estates of decedents and revocable trusts of settlors dying on or after July 1, 2009.

4. The sections of this Act amending sections 633.350 and 633.639 apply retroactively to conveyances occurring on or after July 1, 1999.

5. The sections of this Act amending sections 633.376 and 635.8 apply to estates of decedents dying on or after July 1, 2009.

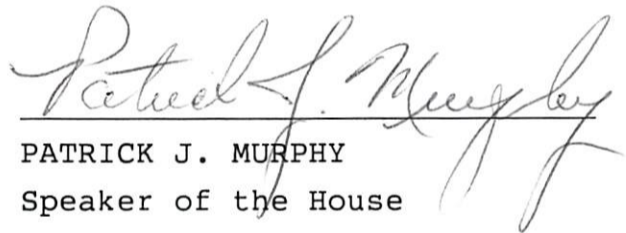
6. The section of this Act amending section 633A.2203 applies to all proceedings to modify dispositive provisions of or to terminate an irrevocable trust on or after July 1, 2009, regardless of the date the trust was created.

7. The sections of this Act amending sections 637.421 and 637.505 apply as of the decedent's date of death for marital trusts funded beginning on or after January 1, 2009. For all other marital trusts, these amendments apply as of January 1, 2009.



JOHN P. KIBBIE

President of the Senate



PATRICK J. MURPHY

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 365, Eighty-third General Assembly.



MICHAEL E. MARSHALL

Secretary of the Senate

Approved April 9th, 2009



CHESTER J. CULVER

Governor