

execution, made before the expiration of the period in which a person may disclaim as provided in this section, bars the right to disclaim that property, interest, or right. An election by a surviving spouse under sections 633.236 through 633.246 is not a waiver or bar of the right to disclaim. The right to disclaim exists irrespective of any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction. A disclaimer, when received, as provided in this section, or a written waiver of the right to disclaim, is binding upon the disclaimant or person waiving and all parties claiming by, through, and under the disclaimant or person waiving. If a beneficiary who disclaims any property, interest, or right is also a fiduciary, actions taken by the person in the exercise of fiduciary powers to preserve or maintain the property, interest, or right shall not be treated as an acceptance of the property, interest, or right. A fiduciary, however, does not retain discretionary power to direct the enjoyment of the disclaimed property, interest, or right.

5. EXCLUSIVENESS OF REMEDY. This section does not abridge the right of a person to assign, convey, release, or renounce any property, interest, or right arising under any other statute.

6. EFFECTIVE DATE--REPEAL. This section applies only to transfers occurring on or after the effective date of this Act.

Sec. 2. Section 1 of this Act does not apply to any transfer occurring prior to the effective date of this Act. A transfer occurring prior to the effective date of this Act shall be governed by the law as it existed prior to the effective date of this Act.

Approved May 5, 1981

CHAPTER 198
POSTCONVICTION PROCEDURE
H. F. 765

AN ACT relating to the use of chapters 663 and 663A of the Code by persons convicted of, or sentenced for, a public offense.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 663A.2, Code 1981, is amended by adding the following new subsection following subsection 5 and renumbering the remaining subsection:

NEW SUBSECTION. 6. The person's reduction of sentence pursuant to section 246.39 or section 246.43 has been unlawfully forfeited; or

Sec. 2. Section 663A.2, subsection 5, Code 1981, is amended to read as follows:

5. ~~His~~ The person's sentence has expired, ~~his~~ or probation, parole, or conditional release has been unlawfully revoked, or ~~he~~ the person is otherwise unlawfully held in custody or other restraint; ~~or~~

Sec. 3. Section 663A.7, Code 1981, is amended to read as follows:

663A.7 COURT TO HEAR APPLICATION. The application shall be heard in, and before any judge of, the court in which the conviction or sentence took place. However, if the applicant is seeking relief under section 663A.2, subsection 6, the application shall be heard in, and before any judge of the court of the county in which the applicant is being confined. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings including pretrial and discovery procedures are available to the parties. The court may receive proof of affidavits, depositions, oral testimony, or other evidence, and may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

Approved May 4, 1981

CHAPTER 199

SMALL ESTATE ADMINISTRATION

H. F. 822

AN ACT relating to the administration of small estates.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 635.1, Code 1981, is amended to read as follows:

635.1 WHEN APPLICABLE.

1. When the ~~total~~ gross value of the probate and nonprobate property of a decedent subject to the jurisdiction of this state ~~including--life--insurance payable--to--the--estate--but--not--including--other--life--insurance~~ does not exceed ~~ten~~ thirty thousand dollars in property subject to taxation under section 450.3, if the decedent dies intestate and is survived by a spouse or children or both, or if the decedent leaves a last will and testament and that will is admitted to probate but there is no present administration and the only beneficiaries are a spouse or children or both, then upon the petition of the spouse or a child of the decedent ~~who is a resident of the state of Iowa,~~ the clerk shall issue to a resident of the state of Iowa designated by the petitioner letters of appointment of executor or administrator for administration of a small estate, if either of the following occur:

a. The decedent dies intestate and is survived by a spouse, or children, or both.

*According to enrolled Act