

CHAPTER 1146
BAILIFFS' SALARIES AND EXPENSES
S.F. 2193

AN ACT authorizing the payment of the salaries and expenses of bailiffs from the court expense fund.

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

Section 1. Section 331.904, subsection 6, Code 1981 Supplement, is amended to read as follows:

6. The salaries and expenses of the deputy officers, assistants, clerks, and other employees of the county shall be paid from the general fund of the county unless otherwise provided by law. The deputy clerks of the district court ~~and~~, other employees of the clerk's office, and the bailiffs may be paid from the court expense fund.

Approved May 6, 1982

CHAPTER 1147
CONTROLLED SUBSTANCES, SIMULATED CONTROLLED SUBSTANCES,
AND IMITATION CONTROLLED SUBSTANCES
S.F. 2202

AN ACT relating to simulated controlled substances and imitation controlled substances, and to the forfeiture to the state of all things of value given or intended to be given in exchange for a controlled substance in violation of the controlled substances Act, and providing penalties.

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

Section 1. Section 204.101, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. "Simulated controlled substance" means a substance which is not a controlled substance but which is expressly represented to be a controlled substance, or a substance which is not a controlled substance but which is impliedly represented to be a controlled substance and which because of its nature, packaging, or appearance would lead a reasonable person to believe it to be a controlled substance.

Sec. 2. Section 204.401, subsection 2, Code 1981, is amended to read as follows:

2. Except as authorized by this chapter, it is unlawful for ~~any~~ a person to create, deliver, or possess with intent to deliver, a counterfeit substance or a simulated controlled substance, or

to act with, enter into a common scheme or design with, or conspire with one or more other persons to create, deliver, or possess with intent to deliver, a counterfeit substance or a simulated controlled substance.

Any A person who violates this subsection with respect to:

a. A counterfeit substance classified in schedule I or II which is a narcotic drug, or a simulated controlled substance represented to be a narcotic drug classified in schedule I or II, is guilty of a class "C" felony.

b. Any other counterfeit substance classified in ~~schedules~~ schedule I, II, or III, or any simulated controlled substance represented to be any other substance classified in schedule I, II, or III, is guilty of a class "D" felony.

c. A counterfeit substance classified in schedule IV, or a simulated controlled substance represented to be a substance classified in schedule IV, is guilty of a serious misdemeanor.

d. A counterfeit substance classified in schedule V, or a simulated controlled substance represented to be a substance classified in schedule V, is guilty of a simple misdemeanor.

Sec. 3. Section 204.406, Code 1981, is amended by striking the section and inserting in lieu thereof the following:

204.406 DISTRIBUTION TO PERSON UNDER AGE EIGHTEEN.

1. A person who is eighteen years of age or over who violates section 204.401, subsection 1, by distributing a substance listed in schedule I or II, which is a narcotic drug, to a person under eighteen years of age, is guilty of a class "B" felony; however the minimum time to be served before parole may be granted is five years. A person who is eighteen years of age or over who violates section 204.401, subsection 1, by distributing any other controlled substance listed in schedule I, II, or III to a person under eighteen years of age who is at least three years younger than the violator is guilty of a class "C" felony. A person who is eighteen years of age or over who violates section 204.401, subsection 1 by distributing a controlled substance listed in schedule IV or V to a person under eighteen years of age who is at least three years younger than the violator is guilty of an aggravated misdemeanor.

2. A person who is eighteen years of age or over who violates section 204.401, subsection 2 by distributing a counterfeit substance listed in schedule I or II which is a narcotic drug, or a simulated controlled substance represented to be a narcotic drug classified in schedule I or II, to a person under eighteen years of age is guilty of a class "B" felony. A person who is eighteen years of age or over who violates section 204.401, subsection 2, by distributing any other counterfeit substance listed in schedule I, II, or III or a simulated controlled substance represented to be any substance listed in schedule I, II, or III, to a person under eighteen years of age who is at least three years younger than the violator is guilty of a class "C" felony. A person who is eighteen years of age or over who violates section 204.401, subsection 2, by distributing a counterfeit substance listed in schedule IV or V or a simulated controlled substance represented to be a substance listed in schedule IV or V to a person under eighteen years of age who is at least three years younger than the violator is guilty of an aggravated misdemeanor.

Sec. 4. NEW SECTION. TITLE. Sections 4 through 9 of this Act may be cited as the "Iowa Imitation Controlled Substances Act".

Sec. 5. NEW SECTION. DEFINITIONS. As used in sections 4 through 9 of this Act, unless the context otherwise requires:

1. "Controlled substance" means a controlled substance as defined in section 204.101, subsection 6.

2. "Deliver" or "delivery" means the actual, constructive, or attempted transfer, distribution, or dispensing to another of an imitation controlled substance.

3. "Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging, or labeling of an imitation controlled substance.

4. "Imitation controlled substance" means a substance which is not a controlled substance but which by color, shape, size, markings, and other aspects of dosage unit appearance, and packaging or other factors, appears to be or resembles a controlled substance.

The state board of pharmacy examiners may designate a substance as an imitation controlled substance pursuant to the board's rule-making authority and in accordance with chapter 17A.

Sec. 6. NEW SECTION. FACTORS INDICATING AN IMITATION CONTROLLED SUBSTANCE. When a substance has not been designated as an imitation controlled substance by the state board of pharmacy examiners and when dosage unit appearance alone does not establish that a substance is an imitation controlled substance the following factors may be considered in determining whether the substance is an imitation controlled substance:

1. The person in control of the substance expressly or impliedly represents that the substance has the effect of a controlled substance.

2. The person in control of the substance expressly or impliedly represents that the substance because of its nature or appearance can be sold or delivered as a controlled substance or as a substitute for a controlled substance.

3. The person in control of the substance either demands or receives money or other property having a value substantially greater than the actual value of the substance as consideration for delivery of the substance.

Sec. 7. NEW SECTION. OFFENSES AND PENALTIES.

1. It is unlawful for a person to manufacture, deliver, or possess with intent to deliver, an imitation controlled substance. Except as provided in subsection 3, a person who violates this subsection is guilty of an aggravated misdemeanor.

2. It is unlawful for a person to publish or to post or distribute in a public place, an advertisement or solicitation, if the person knows or reasonably should know the advertisement or solicitation is to promote the distribution of imitation controlled substances. A person who violates this subsection is guilty of a serious misdemeanor.

3. A person who is eighteen years of age or older who violates this section by delivering an imitation controlled substance to a person under eighteen years of age who is at least three years younger than the violator is guilty of a class "D" felony.

Sec. 8. NEW SECTION. IMMUNITY. It is not unlawful for a person registered under section 204.302, to manufacture, deliver, or possess an imitation controlled substance for use as a placebo by a registered practitioner in the course of professional practice or research.

Sec. 9. NEW SECTION. FORFEITURE.

1. The following are subject to forfeiture:

a. All imitation controlled substances which have been manufactured, delivered or acquired in violation of sections 4 through 9 of this Act.

b. All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting an imitation controlled substance in violation of sections 4 through 9 of this Act.

c. All property which is used, or intended for use, as a container for property described in paragraph a or b.

d. All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of sections 4 through 9 of this Act.

2. Property subject to forfeiture under this section may be seized when any of the following apply:

a. The seizure is incident to an arrest, or a search under a search warrant, or an inspection under an administrative inspection warrant issued as provided in section 204.502.

b. The property subject to seizure has been the subject of a prior judgment of forfeiture in favor of the state in an injunction or forfeiture proceeding based upon sections 4 through 9 of this Act.

c. There is probable cause to believe that the property was used or is intended to be used in violation of sections 4 through 9 of this Act.

3. If property, other than a conveyance subject to forfeiture, is seized under subsection 2, it shall be disposed of in accordance with chapter 809.

However, imitation controlled substances taken, detained, or forfeited shall be disposed of as provided in section 204.506. Imitation controlled substances are not subject to replevin.

Sec. 10. Section 204.501, unnumbered paragraph 1, Code 1981, is amended to read as follows:

The department ~~shall be~~ is primarily responsible for the enforcement of all provisions of this chapter, and all other laws and regulations of this state, relating to controlled or counterfeit substances, or simulated or imitation controlled substances, except that the board ~~shall be~~ is primarily responsible for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, doctors, hospitals, and health care facilities as defined in section 135C.1, subsection 8, as well as in the possession of any and all other individuals or institutions authorized to have possession of any controlled substances, and ~~shall be~~ is also be primarily responsible for ~~such~~ any other duties in respect to controlled substances as ~~shall be~~ specifically delegated to the board by law. ~~Any~~ An officer or employee of the board may, when so directed or authorized by the board:

Sec. 11. Section 204.502, subsection 1, paragraph a, Code 1981, is amended to read as follows:

a. A district ~~or municipal court~~ judge or district associate judge, within ~~his~~ the court's jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by under this chapter or a related rule thereunder, and or under sections 4 through 9 of this Act. The warrant may also permit seizures of property appropriate to ~~such~~ the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the ~~chapter statute or related rules promulgated thereunder~~, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

Sec. 12. Chapter 204, Code 1981, is amended by adding the following new section:

NEW SECTION. PENALTY ENHANCEMENT. A person convicted of violating a provision of this chapter, except section 204.401, subsection 3, may be fined an amount not to exceed three times the amount of the fine otherwise authorized for the violation. This fine may be in addition to any other penalty provided for violation of the provision.

Sec. 13. Section 204.505, subsection 1, Code 1981, is amended by adding the following new paragraph:

NEW PARAGRAPH. Everything of value that is furnished or intended to be furnished in exchange for a controlled substance in violation of this chapter, all proceeds including real and personal property traceable to such an exchange, and all moneys, negotiable instruments, securities, and conveyances used or intended to be used to facilitate a violation of this chapter, except that property shall not be forfeited under this paragraph, to the extent of the interest of an owner, by reason of an act or omission committed or omitted without the owner's knowledge or consent. All moneys, coin, and currency found in close proximity to forfeitable controlled substances, to forfeitable drug manufacturing or distributing paraphernalia, or to forfeitable records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof is upon claimants of the property to rebut this presumption.

Sec. 14. Section 809.1, subsection 4, Code 1981, is amended to read as follows:

4. Property subject to forfeiture except such property forfeitable conveyances described in chapters chapter 127 and except forfeitable controlled substances described in chapter 204.

Sec. 15. Section 809.6, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. If the seized property is of the type described in section 13 of this Act, and the court determines that it is forfeited as provided in section 13 of this Act, or a claimant's right to possession is not established under subsection 2 of section 809.5, the court shall order the property or the proceeds of its sale to be paid to the treasurer of state for deposit in the general fund.

Approved May 7, 1982

CHAPTER 1148

LEASING OF VACANT PUBLIC SCHOOL BUILDINGS

S.F. 2046

AN ACT requiring cities, counties, and state agencies to consider leasing vacant facilities and buildings owned by public school corporations before leasing, purchasing, or constructing a facility or building and requiring a public school corporation to notify certain cities and counties and the department of general services of vacant facilities and buildings owned by the public school corporation.

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

Section 1. Chapter 7A, Code 1981, is amended by adding the following new section:

NEW SECTION. EXECUTIVE ORDER. The governor shall issue an executive order requiring all state agencies to consider the leasing of a vacant facility or building which is appropriately located and which is owned by a public school corporation before a state agency leases, purchases, or constructs a facility or building. The state agency may lease a facility or building owned by a public school corporation with an option to purchase the facility or building in compliance with sections 297.22 through 297.24. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corporation shall notify the state agency at least thirty days before the termination of the lease.

Sec. 2. Chapter 297, Code 1981, is amended by adding the following new section:

NEW SECTION. VACANCY NOTIFICATION. The board of directors shall notify the cities located within the school district, the counties in which the school district may be located, and the department of general services annually of the facilities and buildings owned by the public school corporation which are vacant and available to be leased or purchased.

Sec. 3. Section 331.361, Code 1981 Supplement, is amended by adding the following new subsection: