

CHAPTER 1153**TRUSTS, CONSERVATORSHIPS, AND OTHER PROBATE MATTERS***S.F. 2307*

AN ACT relating to probate including the exclusion of revocable trusts from the restrictions on agricultural land ownership, the creation of standby conservatorships, and the creation and establishment of separate trusts in certain circumstances.

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

Section 1. Section 9H.1, Code Supplement 1993, is amended by adding the following new subsections and renumbering current subsections as necessary:

NEW SUBSECTION. 13A. "Grantor" means a natural person, other than a nonresident alien as defined under section 9H.1, who is the creator of a revocable trust or a trust.

NEW SUBSECTION. 17A. "Revocable trust" means a trust which provides that the grantor retains the power to amend, modify, or revoke the trust at any time prior to the death of the grantor, regardless of whether, subsequent to the execution of the revocable trust and at any time prior to death, the grantor is legally competent to exercise the power to amend, modify, or revoke the trust and regardless of when the trust is created.

Sec. 2. Section 9H.1, subsection 18, Code Supplement 1993, is amended to read as follows:

18. "Testamentary trust" means a trust created by devising or bequeathing property in trust in a will as such terms are used in the Iowa probate code. Testamentary trust includes a revocable trust that has not been revoked prior to the grantor's death.

Sec. 3. Section 9H.1, subsection 19, Code Supplement 1993, is amended to read as follows:

19. "Trust" means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. Trust does not include a person acting in a fiduciary capacity, as defined in subsection 13, ~~of this section~~ or a revocable trust. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact, and in any similar capacity.

Sec. 4. Section 9H.4, unnumbered paragraph 1, Code Supplement 1993, is amended to read as follows:

A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust, revocable trust, or testamentary trust shall not, either directly or indirectly, acquire or otherwise obtain or lease any agricultural land in this state. However, the restrictions provided in this section shall not apply to the following:

Sec. 5. Section 9H.4, unnumbered paragraph 2, Code Supplement 1993, is amended to read as follows:

A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust, revocable trust, or testamentary trust, violating this section shall be assessed a civil penalty of not more than twenty-five thousand dollars and shall divest itself of any land held in violation of this section within one year after judgment. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this section.

Sec. 6. Section 9H.5, Code Supplement 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 4. As used in this section, "authorized trust" does not include a revocable trust.

Sec. 7. NEW SECTION. 633.5 NONESTATE PROPERTY — INSURANCE PROCEEDS.

A decedent's estate shall not include life insurance proceeds, unless the proceeds are payable to the decedent's estate.

Sec. 8. Section 633.197, Code 1993, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. For purposes of this section, the gross assets of the estate shall not include life insurance proceeds, unless payable to the decedent's estate.

Sec. 9. Section 633.559, Code 1993, is amended to read as follows:

633.559 PREFERENCE AS TO APPOINTMENT.

The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as guardian. Preference shall then be given to any person, if qualified and suitable, nominated as guardian for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older, or by standby petition executed by a person having physical and legal custody of a minor. Subject to these preferences, the court shall appoint as guardian a qualified and suitable person who is willing to serve in that capacity.

Sec. 10. Section 633.571, Code 1993, is amended to read as follows:

633.571 PREFERENCE AS TO APPOINTMENT OF CONSERVATOR.

The parents of a minor, or either of them, if qualified and suitable, shall be preferred over all others for appointment as conservator. Preference shall then be given to any person, if qualified and suitable, nominated as conservator for a minor child by a will executed by the parent having custody of a minor child, and any qualified and suitable person requested by a minor fourteen years of age or older, or by standby petition executed by a person having physical and legal custody of a minor. Subject to these preferences, the court shall appoint as conservator a qualified and suitable person who is willing to serve in that capacity.

Sec. 11. NEW SECTION. 633.591A VOLUNTARY PETITION FOR APPOINTMENT OF CONSERVATOR FOR A MINOR — STANDBY BASIS.

A person having physical and legal custody of a minor may execute a verified petition for the appointment of a standby conservator of the proposed ward's property, upon the express condition that the petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in the petition.

Sec. 12. NEW SECTION. 633.703A CREATION AND ESTABLISHMENT OF SEPARATE TRUSTS.

1. In order to allow a trust to qualify as a marital deduction trust for federal estate tax purposes, as a qualified subchapter S trust for federal income tax purposes, as separate trusts 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 or trusts, the governing instrument of a trust may be amended as follows to permit the trust to be divided into one or more separate trusts or be consolidated with one or more other trusts into a single trust:

a. The trust governing instrument may be amended in any respect by any method set forth in the instrument or provided by law.

b. The trust governing instrument may also be amended by the trustee with the written approval of the settlor, and the living and competent beneficiaries entitled to income designated in the governing instrument by name or by class. The approval of a deceased or incapacitated settlor shall not be required.

c. If one or more of the required approvals cannot be obtained, the trustee may apply to the court that would have jurisdiction over the trust for approval of the amendment.

2. For purposes of obtaining the approval of the beneficiaries of a trust by agreement or by the court, the doctrine of virtual representation shall apply.

3. The court shall approve the amendment unless it determines that the proposed amendment will defeat or substantially impair the accomplishment of the trust purposes.

4. The effective date of an amendment shall be specified by the document, agreement, or order making or approving the amendment and the jurisdiction of the court shall be limited to the amendment proceeding unless the trust is being administered subject to court supervision.

Sec. 13. NEW SECTION. 633.703B AVAILABILITY OF AMENDMENT PROCEDURES.

Amendment procedures in this chapter shall be available to trusts created in any manner, whether by trust agreement, will, deed, or otherwise, and may be used on or after July 1, 1994, for any trust created before or after that date.

Approved May 4, 1994

CHAPTER 1154

HIV-RELATED TESTING OF CERTAIN OFFENDERS

H.F. 2149

AN ACT relating to HIV-related testing of convicted sexual assault offenders.

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

Section 1. Section 80.9, subsection 2, paragraph d, Code 1993, is amended to read as follows:

d. To collect and classify, and keep at all times available, complete information useful for the detection of crime, and the identification and apprehension of criminals. Such information shall be available for all peace officers within the state, under such regulations as the commissioner may prescribe; The provisions of chapter 141 do not apply to the entry of human immunodeficiency virus-related information by criminal justice agencies, as defined in section 692.1, into the Iowa criminal justice information system or the national crime information center system. The provisions of chapter 141 also do not apply to the transmission of the same information from either or both information systems to criminal justice agencies. The provisions of chapter 141 also do not apply to the transmission of the same information from either or both information systems to employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the jurisdiction of the department of human services, and employees of city and county jails, if those employees have direct physical supervision over inmates of those facilities or institutions. Human immunodeficiency virus-related information shall not be transmitted over the police radio broadcasting system under chapter 693 or any other radio-based communications system. An employee of an agency receiving human immunodeficiency virus-related information under this section who communicates the information to another employee who does not have direct physical supervision over inmates, other than to a supervisor of an employee who has direct physical supervision over inmates for the purpose of conveying the information to such an employee, or who communicates the information to any person not employed by the agency or uses the information outside the agency is guilty of a class "D" felony. The commissioner shall adopt rules regarding the transmission of human immunodeficiency virus-related information including provisions for maintaining confidentiality of the information. The rules shall include a requirement that persons receiving information from the Iowa criminal justice information system or the national crime information center system receive training regarding confidentiality standards applicable to the information received from the system. The commissioner shall develop and establish, in cooperation with the department of corrections and