

## CHAPTER 34

### IDENTIFICATION AND ERADICATION OF MARIJUANA PLANTS

*S.F. 171*

**AN ACT** providing for the identification and eradication of marijuana plants.

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

Section 1. Section 80.9, subsection 2, paragraph g, Code 1991, is amended to read as follows:

g. To identify and eradicate assist persons who are responsible for the care of private and public land in identifying growing marijuana plants found growing on public or private property when growing marijuana the plants are reported to the department, and. The department shall also provide education to the persons regarding methods of eradicating the plants. The department shall adopt rules governing the identification and eradication of marijuana plants in cooperation with local law enforcement officials necessary to carry out this paragraph.

Approved April 22, 1991

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## CHAPTER 35

### TRADE SECRETS

*S.F. 179*

**AN ACT** relating to the protection of trade secrets and providing an effective date.

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

Section 1. Section 550.2, subsection 4, unnumbered paragraph 1, Code 1991, is amended to read as follows:

“Trade secret” means information, including but not limited to a formula, pattern, compilation, program, device, method, technique, or process that is either both of the following:

Sec. 2. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 23, 1991

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## CHAPTER 36

### PROBATE CODE REVISIONS

*S.F. 213*

**AN ACT** relating to probate code provisions with respect to testamentary trusts, investments by fiduciaries, conservatorships, and the distribution of decedents' property by affidavit.

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

Section 1. Section 633.10, subsection 4, Code 1991, is amended to read as follows:

4. Trusts and trustees.

Except as otherwise provided in this subsection, the appointment of trustees; the granting of letters of trusteeship; the administration of testamentary trusts; the administration of express

trusts where jurisdiction is specifically conferred on the court by the trust instrument; the administration of express trusts where the administration of the court is invoked by the trustee, beneficiary, or any interested party; the administration of trusts which are established by a decree of court and result in the administration thereof by the court; and the settlement and closing of all such trusts.

A trust which is administered solely or jointly by a bank or trust company referred to in section 633.63, subsection 2, is not subject to the jurisdiction of the court unless jurisdiction is invoked by the trustee or beneficiary, or if otherwise provided by the governing instrument. Upon application by a bank or trust company administering a trust which is was in existence on the effective date of this Act May 20, 1985, and is subject to the court's jurisdiction, and following notice to the beneficiaries as provided in section 633.40, subsection 4, the court may for good cause shown shall release the trust from further jurisdiction unless one or more beneficiaries object, on the condition that jurisdiction may be thereafter invoked by the trustee or beneficiary.

The provisions of unnumbered paragraph 2 shall be effective for applications filed on or after July 1, 1991.

**Sec. 2. NEW SECTION. 633.76A EXCEPTION – VOTING OF PUBLICLY TRADED SECURITIES.**

Where there are two or more fiduciaries, a fiduciary may delegate to another fiduciary the power to vote publicly traded securities, unless the instrument creating the estate provides to the contrary. The delegating fiduciary shall not be personally liable for the manner in which such securities are voted by the fiduciary to whom the power is delegated.

Sec. 3. Section 633.123, subsection 1, Code 1991, is amended by striking the subsection and inserting in lieu thereof the following:

1. INVESTMENTS BY FIDUCIARIES. When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing property for the benefit of another, a fiduciary shall exercise the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account. This standard requires that when making investment decisions, a fiduciary shall consider the role that the investment plays within the account's portfolio of assets and may consider the general economic conditions, the anticipated tax consequences of the investment, the anticipated duration of the account, and the needs of all beneficiaries of the account.

The propriety of an investment decision is to be determined by what the fiduciary knew or should have known at the time of the decision about the inherent nature and expected performance of the investment, the attributes of the account portfolio, the general economy, and the needs and objectives of the beneficiaries of the account as they existed at the time of the investment decision.

Sec. 4. Section 633.123, subsection 2, unnumbered paragraph 1, Code 1991, is amended by striking the unnumbered paragraph and inserting in lieu thereof the following:

ACTIONS PURSUANT TO GOVERNING INSTRUMENT. A fiduciary acting under a governing instrument is not liable to anyone whose interests arise from the instrument for the fiduciary's good faith reliance on the express provisions of the instrument. In the absence of an express provision to the contrary in the governing instrument, a fiduciary shall not be deemed to have breached the person's fiduciary duties for continuing to hold property received into an account at the account's inception or subsequently added to the account or acquired pursuant to proper authority if the fiduciary, in good faith and with reasonable prudence, considers that retention is in the best interest of the trust or estate or in furtherance of the goals of the governing instrument.

Sec. 5. Section 633.175, Code 1991, is amended to read as follows:

## 633.175 WAIVER OF BOND BY COURT.

The court may, for good cause shown, exempt any fiduciary from giving bond, provided if the court finds that the interests of creditors and distributees will not thereby be prejudiced. However, the court shall not exempt a conservator from giving bond in a conservatorship with total assets of more than ten thousand dollars, excluding real property, unless it is a voluntary conservatorship in which the petitioner is eighteen years of age or older and has waived bond in the petition.

Sec. 6. NEW SECTION. 633.356 DISTRIBUTION OF PROPERTY BY AFFIDAVIT.

1. When the gross value of the decedent's personal property does not exceed ten thousand dollars and there is no real property or the real property passes to a surviving spouse as joint tenant with right of survivorship, and if forty days have elapsed since the death of the decedent, the successor of the decedent as defined in subsection 2 may, by filing an affidavit prepared pursuant to subsection 3, and without procuring letters of appointment, do any of the following with respect to one or more particular items of personal property:

- a. Receive any particular item of property that is tangible personal property of the decedent.
- b. Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred.
- c. Collect the proceeds from any life insurance policy or any other item of property for which a beneficiary has not been designated.

2. "Successor of the decedent" means:

a. If the decedent died testate, the beneficiary or beneficiaries who succeeded to the particular item of property of the decedent under the decedent's will. For the purposes of this subsection the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.

b. If the decedent died intestate, the person or persons who succeeded to the particular item of property of the decedent under the laws of intestate succession of this state.

3. To collect money, receive tangible personal property, or have evidences of intangible personal property transferred under this chapter, the successor of the decedent shall furnish to the holder of the decedent's property an affidavit under penalty of perjury stating all of the following:

- a. The decedent's name and the date and place of the decedent's death.
- b. That at least forty days have elapsed since the death of the decedent, as shown by an attached certified copy of the death certificate of the decedent.
- c. That the gross value of the decedent's personal property does not exceed ten thousand dollars and there is no real property or the real property passes to a surviving spouse as joint tenant with right of survivorship.
- d. A description of the property of the decedent that is to be paid, transferred, or delivered to the successor.
- e. The name, address, and social security number of the successor of the decedent to the described property, and whether the successor is under a legal disability.
- f. If applicable, that attached copy of the decedent's will is the last will of the decedent and has been admitted to probate or otherwise filed in the office of a clerk of the district court.
- g. That no persons other than those listed in the affidavit have a right to the interest of the decedent in the described property.
- h. That the affiant requests that the described property be paid, delivered, or transferred to the successors of the decedent to the described property.
- i. That the affiant affirms under penalty of perjury that the affidavit is true and correct. More than one person may execute an affidavit under this subsection.

4. If the decedent had evidence of ownership of the property described in the affidavit and the holder of the property would have the right to require presentation of the evidence of ownership before the duty of the holder to pay, deliver, or transfer the property to the decedent would have arisen, the evidence of the ownership, if available, shall be presented with the affidavit to the holder of the decedent's property.

If the evidence of ownership is not presented to the holder of the property, the holder may require, as a condition for the payment, delivery, or transfer of the property, that the successor provide the holder with a bond in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery, or transfer of the property. This subsection does not preclude the holder and the successor from dispensing with the requirement that a bond be provided, and instead entering into an agreement satisfactory to the holder concerning the duty of the successor to indemnify the holder.

Judgments rendered by any court in this state and mortgages belonging to a decedent whose personal property is being distributed pursuant to this section may, without prior order of court, be released, discharged, or assigned, in whole or in part, as to any particular property, and deeds may be executed in performance of real estate contracts entered into by the decedent, where an affidavit made pursuant to subsection 3 is filed in the office of the county recorder of the county wherein any judgment, mortgage, or real estate contract appears of record.

5. Reasonable proof of the identity of each successor of the decedent seeking distribution by virtue of the affidavit shall be provided to the satisfaction of the holder of the decedent's property.

6. If the requirements of this section are satisfied:

a. The property described in the affidavit shall be paid, delivered, or transferred to the successor of the decedent's interest in the property.

b. A transfer agent of a security described in the affidavit shall change registered ownership on the books of the corporation from the decedent to the person listed on the affidavit as the successor of the decedent's interest.

If the holder of the decedent's property refuses to pay, deliver, or transfer any property or evidence thereof to the successor of the decedent within a reasonable time, the successor may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this subsection, the court shall award attorney's fees to the person bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to the person as required by this subsection.

7. If the requirements of this section are satisfied, receipt by the holder of the decedent's property of the affidavit constitutes sufficient acquittance for the payment of money, delivery of property, or transferring the registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any statement in the affidavit.

If the requirements of this section are satisfied, the holder is not liable for any debt owed by the decedent by reason of paying money, delivering property, or transferring registered ownership of property pursuant to this chapter.

8. When a deceased distributee is entitled to money or property claimed in an affidavit presented under this section with respect to a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person identified by the affidavit as the successor of the deceased distributee to the extent that the court determines that the deceased distributee was entitled to the money or property under the will or the laws of intestate succession.

9. The procedure provided by this section may be used only if no administration of the decedent's estate is pending.

Sec. 7. Section 633.591, Code 1991, is amended to read as follows:

633.591 VOLUNTARY PETITION FOR APPOINTMENT OF CONSERVATOR –  
STANDBY BASIS.

Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of the person's property upon the express condition that such 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 said the petition. The petition, if executed on or after ~~July 1, 1989~~ January 1, 1991, shall advise the proposed ward of a conservator's powers as provided in section 633.576.

Approved April 22, 1991

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## CHAPTER 37

### CONTROLLED SUBSTANCES – ANABOLIC STEROIDS

*S.F. 308*

**AN ACT** relating to the Iowa uniform controlled substances Act.

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

Section 1. Section 204.208, Code 1991, is amended by adding the following new subsection:  
NEW SUBSECTION. 5A. Anabolic steroids as defined in section 203B.2 and rules of the board adopted pursuant to chapter 17A.

Approved April 22, 1991

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## CHAPTER 38

### STATE PROGRAMS FOR PERSONS WITH MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, OR MENTAL ILLNESS

*S.F. 345*

**AN ACT** relating to state programs and institutions serving persons with mental retardation, developmental disabilities, or mental illness.

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

Section 1. Section 225C.21, subsection 2, Code 1991, is amended to read as follows:

2. The department shall adopt rules pursuant to chapter 17A establishing minimum standards for the programming of community, supervised apartment living arrangements. The department shall approve annually all community, supervised apartment living arrangements which meet the minimum standards.

Sec. 2. Section 225C.38, subsection 1, paragraph c, Code 1991, is amended to read as follows:

c. Except as provided in section 225C.41, a family support subsidy for a fiscal year shall be in an amount equivalent to the monthly maximum supplemental security income payment available in Iowa on July 1 of that fiscal year for an adult recipient living in the household of another, as formulated under federal regulations. In addition, the parent or legal guardian of a family member who is in an out-of-home placement at the time of application may receive